

VIRGINIA BEACH BAR ASSOCIATION

2019 BENCH BAR CONFERENCE AND LEGISLATIVE UPDATE

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VIRGINIA BEACH BAR ASSOCIATION

**2019 VBBA BENCH BAR CONFERENCE
AND LEGISLATIVE UPDATE**

**AUGUST 29, 2019 12:30 PM TO 5:05 PM
VIRGINIA BEACH CONVENTION CENTER
1000 19TH STREET, VIRGINIA BEACH, VA 23451**

12:30 to 1:30:

- Break out Session 1: The Role of the Vocational Expert in Determining Employability, Placability and Earning Capacity – Gray Broughton, M.Ed., CRC, CCM, with the Honorable Glenn R. Croshaw, Chief Judge of the Virginia Beach Circuit Court serving as a panel member
- Break out Session 2: Transparency in Life Care Plans – Susan Riddick-Grisham, RN, BA, CLCP, with the Honorable James C. Lewis, Judge of the Virginia Beach Circuit Court serving as a panel member

1:30 to 1:35 – Break

1:35 to 2:50:

- Breakout Session 1: Business Tax Returns: What they reveal and how to use them to value a business - Gary Baum, MBA, CPA/ABV, CVA and Robert Burke, CPA, MSA, with the Honorable Glenn R. Croshaw, Chief Judge of the Virginia Beach Circuit Court serving as a panel member
- Breakout Session 2: A Study in Firearms and Ballistics - Christopher Robinson with the Honorable James C. Lewis of the Virginia Beach Circuit Court serving as panel member

2:50 to 3:00: Break

3:05 to 5:05: Legislative Update – Presented by:

Delegate Joseph C. Lindsey – 90th District
Principal of Joseph Lindsey PC

Delegate Jason S. Miyares – 85th District
Partner, Hanger Law

Delegate Jay Jones – 89th District
Partner, Bischoff Martingayle PC

Hon. Gregory D. Habeeb, former Delegate – 8th District
Partner, Gentry Locke

Virginia MCLE Board

CERTIFICATION OF ATTENDANCE (FORM 2)

MCLE requirement pursuant to Paragraph 17, of Section IV, Part Six, Rules of the Supreme Court of Virginia and the MCLE Board Regulations.

Certify Your Attendance Online at www.vsb.org

MCLE Compliance Deadline - October 31. MCLE Reporting Deadline - December 15.
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Course ID Number: VIGG007

Sponsor: Virginia Beach Bar Association

Course/Program Title: 2019 VBBA Bench Bar Conference and Legislative Update

Live Interactive * CLE Credits (Ethics Credits): 4.5 (0.0)

Date Completed: _____ Location: _____

By my signature below I certify

- ___ I attended a total of _____ (hrs/mins) of **approved CLE**, of which (_____) (hrs/mins) were in **approved Ethics**.
Credit is awarded for actual time in attendance (0.5 hr. minimum) rounded to the nearest half hour. (Example: 1hr 15min = 1.5hr)
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- ___ I participated in this program in a setting physically suitable to the course.
- ___ I was given the opportunity to participate in discussions with other attendees and/or the presenter.
- ___ I understand I may not receive credit for any course/segment which is not materially different in substance than a course/segment for which credit has been previously given during the same completion period or the completion period immediately prior.
- ___ I understand that a materially false statement shall be subject to appropriate disciplinary action.

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**THE ROLE OF THE VOCATIONAL EXPERT IN
DETERMINING EMPLOYABILITY, PLACABILITY
AND EARNING CAPACITY**

BY: GRAY BROUGHTON, M.ED., CRC, CCM

VITAE

H. GRAY BROUGHTON, M.Ed., CRC, CCM

VOCATIONAL EXPERT

Broughton Associates, Inc.

8100 Three Chopt Road, Suite 231 Richmond, VA 23229
(804) 282-4199

EMPLOYMENT

Chief Executive Officer, Owner, Broughton Associates, Inc.

2002–Present

Vocational Expert, Job Placement Specialist and Rehabilitation Counselor. Duties: job placement, labor market surveys, medical coordination, staff supervisor, expert witness testimony, and disability management advisor. Specializing in vocational assessments and job placement of workers' compensation claimants. Analyzing and determining injured person's ability to find employment, given the residual effects of his or her injury, taking into consideration all factors that affect employability.

Commissioner, Department of Rehabilitative Services

1999-2002

Appointed by Governor James Gilmore in October 1999. Agency Head responsible for a complex multi-funded state agency with an operating budget of \$121,500,000 for DRS and \$24,500,000 for Woodrow Wilson Rehabilitation Center, which provides opportunities and assistance to individuals with physical, mental, or emotional disabilities in their efforts to obtain employment. Detailed responsibilities include, but not limited to, administrative oversight for:

- 1095 Employees
- 43 Vocational Rehabilitation Field Offices
- 4 Vocational Rehabilitation Regional Offices
- 4 Disability Determination Services Regional Offices
- 5 Major programmatic areas: Vocational Rehabilitation, Woodrow Wilson Rehabilitation Center, Disability Determination Services, Community-Based Programs, and Administrative Services.

President, Owner, Broughton Associates, Inc.

1982 – 1999

Vocational Expert, Job Placement Specialist and Rehabilitation Counselor. Duties: job placement, labor market surveys, medical coordination, staff supervision, vocational assessments, and expert witness testimony. Specialized in the job placement of workers' compensation claimants and vocational assessments. Analyzed and determined injured person's ability to find employment and their earning capacity, given the residual effects of his or her injury, taking into consideration all factors that affect his or her employability.

EDUCATION

- 1965 University of Richmond, BA in Philosophy
- 1979 U.S. Army Command and General Staff College

- 2005 Auburn University, M. Ed. in Rehabilitation and Special Education Rehabilitation Services
2017 Project Management Workshop (Pryor Learning Solutions)

CERTIFICATIONS

Certified Rehabilitation Counselor Certification (April 1991) - Commission on Rehabilitation Counselor Certification
Certified Case Manager (November 1993) - Commission for Case Management Certification
American Board of Disability Analysts (Senior Disability Analyst and Diplomat)
Licensed as a Rehabilitation Provider with the Commonwealth of Virginia
Certified Personnel Consultant
American Board of Vocational Experts, Diplomate

PROFESSIONAL ACTIVITIES & AWARDS

Board Member - Virginia Treatment Center for Children (Medical College of Virginia)
Resource and Development Committee Chairman
Member of the Governor's Board for People with Disabilities - Commonwealth of Va.
Chairman of the Employment Committee
National Association Rehab Professional Private Sector - Regional Director for Virginia (1992-1993). Co-Chairman of Legislative Committee.
National Organization of Rehabilitation Professionals (NORP) - Charter Member and Treasurer (August 2001).
Chi Sigma Iota, Alpha Psi Omega Chapter - Outstanding Service Award (2000 - 2001)
Case Manager's Society of America, Richmond Chapter Vice President (2003-2004)
Alpha Theta Chi Collegiate Honor Society, Auburn University (2005)
Vocational Expert, Social Security Administration (Qualified)
Case Manager's Society of America, Richmond Chapter President (2004-2005)
Richmond Workforce Investment Board
Northstar Academy Board of Directors, Chairman (2006-2008)
Phi Kappa Phi Honor Society; Inducted April 30, 2008
American Board of Vocational Experts, Board of Directors, President (2011-2013), Past Treasurer (2008), Immediate Past President (2013-2015)

PROFESSIONAL ORGANIZATIONS

American Board of Vocational Experts (ABVE)
National Rehabilitation Association
Virginia Rehabilitation Association
International Association of Rehabilitation Professionals

OTHER ACTIVITIES, PAST AND PRESENT

Richmond Jaycees - Director of the Year 1971	Association of the United States Army
United States Army Reserve -	Rotary Club
Rank: Lieutenant Colonel (Retired)	First Baptist Church
Transportation & Public Affairs	American Legion
Reserve Officers' Association	Shrine

APPENDIX

Vocational Criteria & Definitions

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**Seminar Aide for Participants Interactive Report Writing for Different Forensic Venue: Vocational
criteria**

Saturday March 31, 2007

American Board Vocational Experts Spring Conference: Seattle

Prepared by Larry L. Sinsabaugh

Sinsabaugh, L. L. (2007, March 31). *Seminar aide for participants, interactive report writing for different forensic venue: Vocational criteria*. American Board Vocational Experts/ Presentation, Spring Conference Seattle WA: ABVE.

Age Categories

Vocational Experts (VE) generally consider four categories of age¹:

1. Younger Person - if an *individual is under age 50*, VEs generally do not consider that the individual's age will seriously affect the person's ability to adapt to new work situations;
2. Person Approaching Advanced Age - if an individual is closely approaching advanced age (50-54), VEs will consider age, along with a severe impairment and limited work experience as possibly seriously affecting an individual's ability to adapt to a significant number of jobs in the national economy.
3. Person of Advanced Age - VEs consider advanced age (55-59) to be the point at which age significantly affects a person's ability to engage in substantial gainful activity. If an individual is severely impaired, of advanced age, cannot do at least medium work, he/she may be found disabled under regulations such as Social Security Disability, unless the individual has skills that can be used in (transferred to) less demanding jobs that exist in significant numbers in the national economy; and,
4. Person Close to Retirement Age - If an individual is close to retirement age (60-64) and has a severe impairment, the VE will consider the person not able to adjust to sedentary or light work unless the individual has skills that are highly marketable.

(Hall 2001; Havranek, Field, & Grimes 2005, pp. 89-90).

Bridges Criteria²: Safe work readiness [placement] & Work readiness:

1. The worker should have the ability to accomplish the task efficiently & to be able to meet the physical demands of the job.
2. The worker should not be a hazard to him/herself.
3. The worker must not jeopardize the safety of others; and,
4. The job should not aggravate the disability or the handicap of the worker.

(Martin, Sinsabaugh, Jarrell, & Hardy, In Press/2007; Jarrell, G. R., Martin, E. D. Jr., Sinsabaugh, L.L. & Hardy, R.E., 1999; Jarrell, Hardy, & Martin, 1989; Hardy, 1972; Bridges 1946, p. 28)

¹ Age criteria -Sources: (Hall 2001; Havranek, Field, & Grimes 2005, pp. 89-90; Social Security Regulations 2001).
Hall, C. T. (2001). *Social security disability practice 2001 edition*. Danvers, MA: West Group/Thompson.
Havranek, J., Field, T., & Grimes, J. W. (2005). *Vocational assessment: Evaluating employment potential* (4th ed.). Athens, GA: Elliott & Fitzpatrick.
Social Security Regulations (2001). C.F.R. 20, Part 404, Subpart. App.2, as cited by Hall (2001, p. 15-16, § 1:11).
Social Security Administration (1987). *Vocational experts testifying at disability hearings: A self-study guide* [OHA Training Series, SSA Publication no. 70-009]. Washington, DC: Author.

² Bridges Criteria for predicting placement Success (Martin, Sinsabaugh, Jarrell, & Hardy, In Press/2007; Jarrell, G. R., Martin, E.D. Jr., Sinsabaugh, L.L. & Hardy, R.E., 1999; Jarrell, Hardy, & Martin, 1989; Hardy, 1972; Bridges 1946, p. 28) sources:
Martin, E. D., Jr., Sinsabaugh, L. L., Jarrell, G. R., & Hardy, R. E. (In press - 2007). *Career Development and Job Placement Strategies: Considerations for the Rehabilitation Counselor* (Chap. 6). In E. D. Martin, Jr. (Ed.). *Principles and practices of case management in rehabilitation counseling*. Springfield, IL: Charles C. Thomas.
Jarrell, G. R., Martin, E. D. Jr., Sinsabaugh, L. L. & Hardy, R. E. (1999). Occupational analysis and placement. In G. Gandy, E. Davis Martin, Jr., R. E. Hardy & J. G. Cull (Eds.), *Counseling in the rehabilitation process: Community Services for mental and physical disabilities* (2nd ed., pp. 130-158). Springfield, IL: Charles Thomas.
Jarrell, G. R., Hardy, R. E., & Martin, E. D., Jr. (1989). Occupational analysis and placement. In Gerald L. Gandy, E. Davis Martin, Jr., Richard E. Hardy & John G. Cull (Eds.), *Rehabilitation Counseling & Services: Professions and process*. Springfield, IL: Charles C. Thomas, pp. 143-142.
Hardy, R. E. (1972). Vocational placement. In J. Cull & R. E. Hardy (Eds.), *Vocational rehabilitation: Profession and process*. Springfield, IL: Charles C. Thomas, p. 246-247.
Bridges, C. D. (1946). *Job placement of the physically handicapped*. New York: McGraw-Hill.

Deutsch & Sawyer Criteria

Deutsch & Sawyer (2001; 2000; 1997; 1985) criteria (1-6)³ as applied to earning capacity is made within the context of a traditional vocational assessment (i.e., age, education, academic and intellectual development, training experiences, work and earnings history, transferable work skills, social skills, job seeking behaviors, work barriers and residual functioning capacity). The Deutsch & Sawyer criteria addresses: Work identity and work goals; degree of establishment within the vocational goal; the comparison of earnings; and, the surrender of earning capacity or the potential for under-employment. Typically criteria 1-4 can be group together; Criterion 5 addresses the benchmarking of earnings; and the last, criterion 6, is a measure of the voluntary surrender of earning capacity or a measure of potential under employment. The six criteria are:

1. Whether the person has a relatively well-established work identity and goal.
2. The degree to which the person is established in this vocational goal.
3. The degree that the individual has developed the necessary skills and abilities required to show proficiency in the chosen vocational goal.
4. The number of years of experience the individual has in the vocational goal.
5. The degree to which a difference exists between the individual's earned wages and the average earnings for most workers in the chosen vocational goal.
6. The degree if any, to which the person voluntarily restricts:
 - (a) The number of hours worked per week (e.g., pre- and post-accident);
 - (b) The degree if any, to which the individual's work is restricted by the number of work weeks available to work in a typical work year; and/or,
 - (c) Implied; the self-imposed restriction in the amount of time (i.e., contact hours or weeks or months etc.) made available for seeking work (e.g., refusing to look for work; the amount of time devoted to or spent looking for a job; and/or, not seeking work within the area for which one has training, education or work skills).

Criterion #6 is generally noted as the surrender of earning capacity. (Sources: Deutsch & Sawyer, 2001; 2000; 1997; 1985)³.

Earning Capacity Defined: The Value of Work in the Work Force

The amount of money a person can earn because of age, education, training, PRWE & RFC.

The definition includes three vocational factors:

- (1) The amount of money that a worker is capable of earning
- (2) The ability to hold skill and earning power
- (3) One's ability to obtain and/or hold the highest paying job(s)

The expected earnings of a worker who chooses to maximize the expectation of actual earnings

Earning capacity (EC) is defined as the potential of a worker possessing knowledge, skills, and abilities (KSA's) to work and earn money in a competitive labor market.⁴ Overall, EC is the expected earnings

³ Deutsch & Sawyer criteria (2001; 2000; 1997; 1985) sources:

Deutsch, P. M. & Sawyer, H. W. (Eds.). (2001). *A guide to rehabilitation*. (Rel. 16, Supl.). [Chapter 8, pp. 8/1-8/23] White Plains, NY: Ahab Press.

Deutsch, P. M. & Sawyer, H. W. (Eds.). (2000). *A guide to rehabilitation*. (Rel. 15, Supl.). [Chapter 8, pp. 8/1-8/23] White Plains, NY: Ahab Press.

Deutsch, P. M. & Sawyer, H. M. (Eds.). (1997). *A guide to rehabilitation*. (Rel. 12, Supl. Chap. 8, pp. 8/1-8/23). White Plains, NY: Ahab Press [formerly Matthew Bender]. NY: Matthew Bender.

Deutsch, P. M. & Sawyer, H. M. (Eds.). (1985). *A guide to rehabilitation*. [Chap. 8, pp. 8/1-8/23]. White Plains, NY: Matthew Bender.

⁴ The most commonly accepted definitions of earning capacity involve the amount of money a person can earn because of age, education, training, work experience and residual functional capacity (Deutsch & Sawyer, 1985; 1997; Field, Weed, & Grimes, 1986; Field and Sink, 1981)⁴. The definition usually contains three vocational elements: (1) The amount of money that a worker is capable of earning by virtue of physical condition (residual functional capacity), the degree of recovery, experience and training (Good Practice Manual, 1988); (2) The ability to hold skill and earning power (Deutsch &

Appendix - Vocational Criteria (continued).

of a worker who *chooses to maximize* the expectation of actual earnings, based upon reliable evidence (Dillman, Field, Horner, Slesnick & Weed, 2001, p. 6)⁵.

Employability, Placeability & Residual Functional Capacity Defined

Employability: Ability to meet worker requirements

Placeability: The worker's potential to be hired or placed

Residual Functional Capacity (RFC): What an individual can do in a work setting despite the functional limitations

Employability⁶ is the ability to: (1) meet worker requirements, (2) have access to work KSA's and (3) have the traits or occupational familiarity necessary to perform a job or the kinds and types of jobs on the basis of age, education, work experience and residual functional capacity (Field, 1999, pp. 1-6; 1987; Field & Weed, 1988; Weed, 2000; 1990).

Placeability⁷ is defined as the *worker's potential to be hired or placed within a given job in the local labor market* (Field, 1999, p. 1-12; 1987; Field & Weed, 1999; Weed, 2001, 1990) and by one's availability to interview and work (Deutsch & Sawyer, 2000; 1985).

Residual Functional Capacity (RFC)⁸ is defined as what an individual can do in a work setting despite the functional limitations and environmental restrictions imposed by all of his/her medically exertional and non-exertional determinable impairments (Blackwell, Field, Johnson, Kelsay, & Neulicht, 2005, p. 194)⁹.

Sawyer, 1985, 1997); and (3) The ability of the individual to obtain and/or hold the highest paying jobs to which he or she might have access (Weed & Field 2001; 1990, p. 269).

⁵ Maximizing earning capacity: Dillman, E. G., Field, T. F., Horner, S., Slesnick, Weed, R. O. (2001). *Approaches to estimating lost earnings: Strategies for the rehabilitation consultant*. Athens, GA: Elliott & Fitzpatrick.

⁶Employability: A person who possesses the KSA's and worker traits necessary to perform a job or categories of jobs may be said to be employable (Field & Weed, 1988, p. 1.7). Employability may be impacted by age, education, work experience, RFC and personal factors (e.g., work interests, personality, aptitude and achievement). Sources: Field (1999; 1987); Field & Weed (1988) and Weed & Field (2001; 1990).

Field, T. F. (1987). *Labor market access: Rationale & Research*. Athens, GA: Elliott & Fitzpatrick.

Field, T. (1999). *Strategies for the rehabilitation consultant: Transferability, loss of employment, lost earning capacity, damages*. Athens, GA: Elliott & Fitzpatrick.

Field, T. F. & Weed, R. O. (1988). *Transferability of Work Skills*. Athens GA: Elliott & Fitzpatrick.

Weed, R. O. & Field, T. F. (2001). *Rehabilitation consultant's handbook* (rev.). Athens, GA: Elliott & Fitzpatrick.

Weed, R. O. & Field, T. F. (1990). *Rehabilitation consultant's handbook*. Athens, GA: Elliott & Fitzpatrick.

⁷ Placeability can be expressed in economic terms and/or by the by the applicant's ability to interview well and demonstrate motivation in such a way as to create a favorable positive impression upon an employer. Operationally defined, placeability requires the applicant to demonstrate appropriate Job Seeking Skills (i.e., to describe work experience and education in job related terms; to demonstrate the ability to answer problem questions using positive statements citing abilities, skills and work related comments; to dress in clothes appropriate to the job; and expressing motivation and desire to work (Bakeman, 1971). Finally, placeability requires the applicant to be "job ready," to have an appropriate job goal, and be available for work (Deutsch & Sawyer, 2000; Hall, Otto, Bakeman, 1972; Sturm, Otto Bakeman, 1972). In summary, a person who is employable and placeable has access to the residual functional capacity (RFC), skills or worker traits, and/or the necessary and supportive work experience required to perform a job or categories of jobs (Field, 1999, pp. 1-6; Field, 1987; Field & Weed, 1988; Martin, Sinsabaugh, Jarrell, & Hardy, 1999; Weed & Field, 2001; 1990). Sources: Bakeman (1971) Deutsch & Sawyer (2000; 1985), Field, T. (1999), Field, T. F. (1987), Field & Weed (1988), Hall, Otto, & Bakeman (1973) and Weed & Field (2001; 1990).

Bakeman, M. (1971). *Job seeking skills reference manual*. Minneapolis, MN: Minneapolis Rehabilitation Center.

Hall, N., Otto, N., Bakeman, M. (1973). *Job development instructor's guide: To be used with the job development reference manual*. Minneapolis, MN: Minneapolis Rehabilitation Center.

Strum, T. E., Otto, N. R. & Bakeman, M. (1972, April). *Vocational diagnostic interviewing*. Minneapolis, MN: Minneapolis Rehabilitation Center [Now called Resource, 1900 Chicago Av. Minneapolis, MN 55404].

⁸ RFC is the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of the jobs. (SSA, 1987; *Federal Social Security Laws*, 2002; Weed & Field, 2001) Information about RFC comes from available medical reports and records, information from attending and examining physicians, functional capacity evaluations (FCE's) and from information obtained from the evaluatee through a variety of techniques such as clinical vocational diagnostic interviewing and vocational and psychological appraisal instruments (e.g., *Functional Capacities Checklist* and others).

⁹ RFC source: Blackwell, T., Field, T., Johnson, C., Kelsay, M., & Neulicht, A. (2005). *The vocational expert: Revised and updated*. Athens, GA: Elliott & Fitzpatrick.

Forensic Disclosure

Disclosure¹⁰ is the process of informing the evaluatee or his/her representative about, the assessor's credentials to perform such an assessment, role and responsibilities, and the nature of the engagement. A vocational assessment or evaluation is not considered treatment nor does it imply that one is entering into a counseling relationship. Disclosure outlines:

- the evaluatee's roles and responsibilities; the nature of limited confidentiality; the frequency and length of service and fees; the nature and type of assessment and the services to be provided;
- the "risks and benefits" involved with this interaction and those associated with electronic communication;
- The potential of this consultant to provide testimony in a court setting regarding the evaluatee's case; and records preservation/retention.
- Risks may include but are not limited to: the notion that the evaluatee may not agree with opinions formulated and in some instances opinions formulated may not be favorable to the evaluatee's case.
- As an evaluation is taking place within the context of legal action brought by the evaluatee or someone else; it is important that the evaluatee understand that any information given or received about the case, during the course of this consultant's engagement, may be shared in the assessment/evaluation report, or such may result in disclosure in a legal or quasi-legal proceeding. One should note that the normal protections associated with confidentiality considerations of a "client-counselor relationship" may not apply within this context.
- In some particular instances, under the mandate of state law, this evaluator is a "mandatory reporter" in such matters pertaining to the potential harm to self or to children, elders, animals.

Job availability: Kerner criteria & Niemiec Test

Kerner Criteria

Kerner Criteria defines "job availability" as:

Something more than the mere existence of jobs within an individual's physical capacity
But less than an actual job offer

Kerner criteria: the "reasonable opportunity" to be hired:

"If the job were open and
Applications for employment were being taken"

¹⁰ Disclosure is the process of informing the evaluatee or his/her representative about the assessor's credentials to perform such an assessment, role and responsibilities, and the nature of the engagement. A vocational assessment or evaluation is not considered treatment nor does it imply that one is entering into a counseling relationship. Disclosure outlines the evaluatee's roles and responsibilities; the nature of limited confidentiality; the frequency and length of service and fees; the nature and type of assessment and the services to be provided; the "risks and benefits" involved with this interaction and those associated with electronic communication; the potential of this consultant to provide testimony in a court setting regarding the evaluatee's case; and records preservation/retention. Risks may include but are not limited to: the notion that the evaluatee may not agree with opinions formulated and in some instances opinions formulated may not be favorable to the evaluatee's case. As this evaluation is taking place within the context of legal action brought by the evaluatee or someone else; it is important that the evaluatee understand that any information given or received about the case, during the course of this consultant's engagement, may be shared in the assessment/evaluation report, or such may result in disclosure in a legal or quasi-legal proceeding. One should note that the normal protections associated with confidentiality considerations of a "client-counselor relationship" may not apply within this context. And in some particular instances, under the mandate of state law, this evaluator is a "mandatory reporter" in such matters pertaining to the potential harm to self or to children, elders, animals.

Appendix - Vocational Criteria (continued).

The Kerner Criteria (Hannings, Ash, & Sinick, 1972)¹¹ defines "job availability" as something more than the mere existence of jobs within an individual's physical capacity, but less than an actual job offer—It is "the *reasonable opportunity to be hired if the job were open and applications for employment were being taken*" (Hannings, Ash, & Sinick, p. 6).

Niemiec Test

For vocational purposes, the Kerner criteria's definition of job availability is congruent with what Brett Turner (2005) calls the Niemiec test¹². According to Turner (2005), job availability requires more than a mere recitation of the numbers of jobs or a listing of jobs found in a particular labor market. The *Niemiec test* can not be met by simply showing a list of positions advertised in the newspaper or on the Internet. Moreover, Turner writes, "showing that the spouse would probably be hired requires an analysis and inquiry to the specific job(s) and the employer(s)." Turner (2005) indicates there are three prongs to the *Niemiec test*: "Prong #1 of Niemiec Test," the list of available jobs. The methodology used in this report exceeds the Kerner Criteria and is congruent with the *Niemiec test*. Prong #2 of the Niemiec test, *The Analysis*, comes from the expert and is found in the body of the report—that is, the analysis of the employability and placeability factors of the case. Finally, Prong #3 of the Niemiec test is the salary information. The salary information is also displayed on the Appendix of Jobs Identified. Vocationally, in matrimonial cases, job availability is addressed from both perspectives: the *Kerner criteria* and *Niemiec test*.

Vocational Certainty/Reasonable Probability

Vocational certainty¹³ is also known as the degree of "reasonable probability." In most states the expert witness (i.e., counseling, medical, psychological, or rehabilitation) is often asked to state his or her conclusions and opinions to a reasonable degree of certainty (e.g., reasonable psychological, reasonable rehabilitation probability, etc). Although a wide range of possibilities may occur, it is up to the expert as to whether or not his or her opinions or conclusions are *within reasonable probability within the guidelines of the profession* (Blackwell, 1991; Blackwell, Field, Johnson, Kelsay & Neulicht, 2005; Farnsworth, et al., 2005; Weed and Field, 2001, pp. D-1-10, D-11-17; Weed & Field, 1990, 23-24, 201-212; Field, Weed & Grimes, 1986; & Field & Sink, 1981).

¹¹ Kerner criteria is derived from a U.S. Circuit Court of Appeals for the fifth Circuit, *Gardner v. Smith* 368 F. 2d 77. The U.S. Circuit Court of Appeals for the fifth Circuit and is published as a guideline to vocational experts by the Social Security Administration-Office of Hearings and Appeals by Hannings, Ash, & Sinick (1972). Kerner criteria sources:

Gardner v. Smith (1966). 368 F. 2d 77. The U.S. Circuit Court of Appeals for the fifth Circuit.

Hannings, R. B. Ash, P. & Sinick, D. (1972). Forensic psychology in disability adjudication: A decade of experience. Vocational experts in the Bureau of Hearings and Appeals. Washington, DC: US Department of Health, Education and Welfare, Social Security Administration: Bureau of Hearings and Appeals, DHEW Publication (SSA) 72-10284.

¹² Niemiec sources:

Turner, B. R. (2005). Imputation of income to a party who is seeking spousal support. *The Virginia Bar Association News Journal* |December 2004/January 2005), 16-18.

Niemiec v. Commonwealth ex rel. Niemiec, 27 VA App.446, 451, 499 S.E.2d 567 579 (1988).

¹³ Reasonable Probability-Vocational certainty. Sources:

Blackwell, T. L. (1991). *The vocational expert primer*. Athens, GA: Georgia Southern Press/ Elliott and Fitzpatrick.

Blackwell, T., Field, T., Johnson, C., Kelsay, M., & Neulicht, A. (2005). *The vocational expert: Revised and updated*. Athens, GA: Elliott & Fitzpatrick.

Farnsworth, K, Field, J., Field, T. F. Griffin, Jayne, K., Johnson, C. B., Kelsay, M., Neulicht, A.T., Taylor, D. Van de Biltner, E. E., & Van de Biltner, S. (Eds.), (2005). *The quick desk reference for forensic rehabilitation consultants*. Athens, GA: Elliott & Fitzpatrick.

Field, T. F. & Choppa, A. J. (2005). *Admissible testimony: A content analysis of selected cases involving vocational experts with a revised clinical model for developing opinion*. Elliott & Fitzpatrick.

Field, T. F., Weed, R. O. & Grimes, J. W. (1986). Vocational experts handbook. Tucson, AZ: Valpar International, pp. 23-25.

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Appendix - Vocational Criteria (continued).

Field, Weed & Grimes (1986) and Field & Sink (1981) indicate that an expert must be shown to *possess scientific, technical or other specialized knowledge* in a particular area by reason of knowledge, skill, experience, education and training. It is not easy to define "reasonable," and certainly there may be some latitude on the part of the expert. Generally speaking, *Vocational Expert conclusions can be considered to meet the criteria of reasonable probability if the expert bases his/her opinions or conclusions on sound fact and evidentiary predicate, is rational, can be well analyzed, and can be fairly and reasonably expected as the outcome.* Making a determination of reasonable probability the VE should be prepared to document his or her conclusion(s) based on all of the data used to formulate his or her opinion (Blackwell, 1991; Field & Sink, 1981; Field, Weed, & Grimes, 1986). Finally, Field & Choppa (2005, pp. 29-30) write, the opinions expressed should be a result of clinical analysis following accepted vocational criteria and the use of clinical judgment.

Niemiec Test Prongs:

Three prongs to the Test:

- Prong #1** – The list of available jobs. The methodology used in this report exceeds the Kerner Criteria and is congruent with the Niemiec Test.
- Prong #2** – The Analysis. Comes from the expert and I found in the body of the report, this is, the analysis of the employability and placeability factors of the case.
- Prong #3** – Salary Information – The salary information is also displayed on the Appendix of jobs identified. Specific to each job.

Vocationally, in matrimonial cases, job availability is addressed from both perspectives: the Kerner Criteria (pg. 5) and Niemiec Test (pg. 6).

Imputation of Income to a Party Who Is Seeking Spousal Support

by Brett R. Turner

Two or three generations ago, with most women working in the home and not earning a salary, spousal support was a simpler issue than it is today. The court measured the wife's reasonable needs, compared them to the husband's reasonable ability to pay, and made its final award.

Today, with women either employed or employable in the workplace, an additional step has been added to the process. Not only are women capable of earning a salary, but they also often own substantial property. Thus, after measuring the wife's reasonable needs, the court must discount those needs by the amount which the wife is reasonably able to contribute to her own support.¹ To coin a phrase, the court must look to the wife's "net needs"—the difference between the base amount of her reasonable needs, and her own capacity to meet them.

Because so many women have earning capacity in modern divorce cases, there has been significant growth in Virginia case law on imputation of income to a spouse who is receiving support.² The purpose of this article is to set forth the basic elements of that case law. While the primary focus will be upon spousal support cases, the standard discussed here also applies to child support.

General Standard

"The burden is on the party seeking the imputation to prove that the other parent was voluntarily foregoing more gainful employment, either by producing evidence of a higher-paying former job or by

showing that more lucrative work was currently available." *Niemiec v. Commonwealth ex rel. Niemiec*, 27 Va. App. 446, 451, 499 S.E.2d 576, 579 (1998). Thus, there are two distinct bases upon which income can be imputed to a support recipient. First, income can be imputed if the recipient voluntarily left a former position which offered higher wages than the recipient presently earns. Second, income can be imputed if a position offering higher wages is "currently available," and the recipient is voluntarily refusing to accept it.

This general standard assumes that the court has already decided that the spouse receiving support has a currently operative duty to work. Where the parties have agreed during the marriage that one spouse will remain home and care for children until they reach a certain age, the court is allowed to consider that factor in setting support, and to rule that the spouse in question has no duty to work until the children reach the agreed-upon age.³ The court is also allowed to order that the custodial parent not be required to work, or at least not work full time, if the children have special needs which are best met in the home.³

Former Position

Under *Niemiec*, imputation of income based upon a previously-earned salary is an *alternative* to proof that a better position is presently available. Thus, when relying on the former position prong of the *Niemiec* test, the spouse paying support need not prove that any position is presently available to

the spouse receiving support. The theory, of course, is that the recipient would still have the former position if he or she had not left it voluntarily.

The former position theory does not apply to literally every former position which the recipient has ever held. The best policy discussion is from a trial court case:

[The former job theory] is premised on the concept that the pre-change employment is evidence of ability to pay or earning capacity. When the job change is recent it is reasonable to project income based on the pre-change employment. But as more time passes, it might not be reasonable to project income based upon the pre-change employment. Businesses change. Job markets fluctuate. Over time many factors beyond the control of a spouse or parent can affect income. If they exist, then they should be considered by a court in deciding a support modification motion.⁵

Appellate case law applying the theory usually speaks in terms of "recent" prior employment, without providing a more specific definition.⁶ Cases accepting the theory have usually involved earnings less than two years old.⁷ The fact that the earnings were from employment with the other spouse's business during the marriage does not itself prevent imputation.⁸ Cases rejecting the theory have involved earnings more than 10 years old.⁹

A considerable grey area exists between the relatively recent earnings in the former set of cases, and the relatively outdated earnings

in the latter set of cases. Only a few decisions have considered cases falling within this area, and the results have generally depended upon the facts. A Loudoun County case rejected prior earnings which were only five years old:

[The husband] offered evidence that the Wife made over \$50,000 in the telecommunications industry at Sprint when she left in 1995. The Husband offered merely his opinion that the Wife could be hired and retrained to make up for whatever she lost due to the changes in technology since 1995. Both parties agreed that the technology of the telecommunications industry has changed since 1995. The Husband offered no evidence of current entry level salaries in the same industry or what she could earn with retraining. Without more, the Husband has not met his burden to prove that the Wife is voluntarily underemployed.¹⁰

The result reached was obviously heavily dependent upon evidence of specific changes in the telecommunications industry during the five-year period. This dependency suggests that the nature of the field of prior employment can be an important variable in determining when prior employment is sufficiently "recent" to serve as a basis for imputing income.

Where the prior position involved only part-time work, it is error to impute income based upon full-time employment at the same rate.¹¹ The past availability of a part-time position is no guarantee that a full-time position is actually available. In addition, some employers compensate full-time employees at a lower salary rate, because they receive health insurance or other fringe benefits. A full-time salary could be imputed, of course, under the second prong of the *Niemiec* test.

Prior salary is a valid basis for imputing income only where the spouse left the position *voluntarily*. In *Srinivasan v. Srinivasan*, 10 Va. App. 728, 396 S.E.2d 675 (1990), the

ABOUT THE AUTHOR

Brett R. Turner is a Senior Attorney with the National Legal Research Group in Charlottesville, specializing in the field of family law. He is author of *Equitable Distribution of Property* (West Group 2d ed. 1994), a leading nationwide treatise on equitable distribution, and editor-in-chief of the monthly law journal *Divorce Litigation*. Together with Laura W. Morgan, he is also author of *Attacking and Defending Marital Agreements* (American Bar Association Family Law Section 2001), the first nationwide treatise to address validity and construction of antenuptial and separation agreements from the viewpoint of the attorney who must deal with them after they have already been signed. A regular speaker at CLE seminars, he has almost 20 years of experience researching family law issues for attorneys all across the nation. His law degree is from the University of North Carolina at Chapel Hill, and he is a member of the North Carolina Bar Association.

wife had been employed for a number of years at George Mason University, but she lost that position in 1982 when she did not obtain tenure. At a support hearing roughly six years later, neither the trial court nor the appellate court paid any particular attention to the wife's former salary, and a decision imputing income to the wife was ultimately reversed. The salary at issue was somewhat dated, but the wife's field (Indian art and religion) was not an area which changes greatly in short periods of time. A more significant factor may have been that the wife's loss of tenure was to all indications involuntary.

Present Position

The second prong of the *Niemiec* test allows imputation of income based upon the salary which the spouse receiving support hypothetically *could* earn at a *new* position. To meet this prong, the spouse paying support must prove (1) that the position is presently available; (2) that the spouse receiving support would probably be hired if he or she applied for the position; and (3) the specific salary offered by the position.

Many attempts to rely upon this prong have foundered upon the rock of the first element—the requirement that the position be presently available. It is clearly not sufficient to prove that the spouse receiving support is generally qualified for a position in a certain field; there must be proof that there are specific positions available in that field.¹²

There is some suggestion that the

court is not required to impute income based upon an available position which would require a major interstate relocation.¹³

In addition to proving that a position is presently available, the spouse paying support must also prove that the spouse receiving support would probably be hired to fill it. This requirement cannot be met simply by showing available positions advertised in a newspaper or on the Internet.¹⁴ Many such advertisements are answered by a large number of qualified applicants, so that the position is *actually* available only to persons with higher credentials than those expressly stated in the advertisement. Some institutions advertise positions only as a formality, when in reality the person who will fill the position has already been chosen. Still other employers have requirements which they will not state openly in an advertisement. For example, no employer would openly admit to a reluctance to hire older homemakers, or applicants of a particular race or gender, yet such reluctance exists at times in the workplace. An advertisement, by itself, is not sufficient proof that the spouse receiving support would actually be hired into the advertised position.

Of course, an advertisement can certainly be in some instances a good indication that the support recipient is qualified to fill a particular open position. The important point is to make certain that the advertisement is reviewed by a person with the expertise to

consider the many possible factors lurking beneath the surface of the advertisement.

This observation leads logically to a discussion of the single most important type of evidence for imputing income under the second *Niemiec* prong: the testimony of a vocational expert. Vocational experts have the skill to determine when a position is *actually* available and whether a particular person is *likely* to be hired to fill it. Many such experts will rely upon a variety of hearsay sources, including the job advertisements which are so problematic when considered by themselves. This is not an evidentiary problem, for experts are allowed to rely upon hearsay facts in reaching their opinions, so long as the facts are traditionally relied upon by experts in the field.¹⁵ Vocational experts necessarily rely upon advertisements and other job listings in determining whether persons are employable. So long as a vocational expert has actually assessed the various factors which could potentially operate beneath the surface of a job listing, an expert opinion based upon the job listing can be admissible and persuasive.

Virginia has only begun to scratch the surface of the many questions posed by the use of vocational experts in divorce cases. Increased use of vocational experts is probably the greatest change the nationwide law of spousal support since the introduction of limited duration support in the 1970s,¹⁶ so the Commonwealth is not alone in feeling its way into this new area.

After reviewing case law across the nation for purposes of another article,¹⁷ the author concluded that the most important element of persuasive vocational testimony is *specificity*. The expert should state that spouse X is qualified to fill positions A, B, and C, that those positions are presently available, and that spouse X would probably be hired for those positions if he or she applied for them. It is helpful to have the expert refer to specific job listings, not as evidence in and of

themselves, but as *part* of the basis for the expert's opinion that the positions are available. Do not neglect to have the expert state a specific salary or salary range for each available position; imputed income cases can be lost for failure to prove salary, just as personal injury cases can be lost for failure to prove damages.¹⁸

While expert testimony is most common way to prove the availability of a new position, it is important not to neglect another potential source: concessions by the spouse receiving support. If that spouse admits that employment is available at a stated amount, the court is permitted to accept that admission, even in the absence of supporting evidence.¹⁹

Conclusion

In a world in which both husband and wives are generally employed during the marriage, the law should generally encourage both husbands and wives remain employed after the marriage ends. The doctrine of imputed income is essentially the device used by the law to enforce the duty to work. Where the duty to work applies to a support recipient to begin with, the doctrine of imputed income should apply as well.

At the same time, it is absolutely essential in all contexts that imputed income be based upon a factually realistic assessment of the salary which the spouse in question is actually capable of earning. The two-prong *Niemiec* test recognizes this requirement by linking the amount of imputed income to actual salaries earned through past or *available* present employment. While the test imposes an evidentiary burden on the spouse paying support, its consistent use should go a long way toward ensuring that imputed income findings are solidly based in economic reality.

NOTES

1. On the law, of course, Virginia has always considered the wife's earning capacity as a factor in setting support:

It must also be borne in mind that the appellee is a young woman, only 28

years of age, and that under modern conditions there is open to her practically every avenue for making money that is open to her husband . . . that her time is her own; that she has no right to remain idle at the expense of her former husband; and that it is her duty to minimize his loss, albeit it was through his fault that she was compelled to ask that the contract of marriage be rescinded.

Barnard v. Barnard, 132 Va. 156, 111 S.E. 227, 230 (1922). But cases in which the wife actually had earning capacity were once rare upon the facts, so that case law on the issue was seriously underdeveloped. In the past 20 years, with women having earning capacity on the facts in the great majority of all cases, case law on the issue has grown dramatically.

2. While most support recipients are women, some support recipients are men. This article will consider case law discussing imputation of income to any recipient of spousal support, regardless of gender.

3. See Va. Code Ann. § 20-107.1(E)(11); *Massa v. Massa*, 2004 WL 812836 (Va. Ct. App. 2004). Since there is no comparable provision under the law of child support, *Massa* raises the possibility that the law of imputing income might be different under the law of child support than under the law of spousal support, where the parties agreed that one of them should limit work time to care for young children.

4. *Driskill v. Driskill*, 2004 WL 1486958 at *3 (Va. Ct. App. 2004) (where "the parties' son had special educational and other needs including counseling, tutoring, and medical care," trial court did not err by failing to require that the wife accept additional employment).

5. *Cherpes v. Cherpes*, 2003 WL 22257982 at *6 (Va. Loudoun County Cir. Ct. 2003).

6. E.g., *Mir v. Mir*, 39 Va.App. 119, 130, 571 S.E.2d 299, 304 (2002) ("There is no evidence in the record that husband . . . had recently left a job that paid a similar amount"); *Milkovic v. Napier*, 2002 WL 1796990 at *2 (Va. Ct. App. 2002) ("Appellant is an articulate, educated professional, with marketable skills evidenced by recent, well-compensated employment").

7. See *Silberblatt v. Silberblatt*, 1999 WL 1129653, *3 (Va. Ct. App. en banc 1999) (initial support case; wife worked as a nurse in husband's medical practice until divorce filed, and worked several days per month for third party during pendency of practice); *Milkovic v. Napier*, 2002 WL 1796990 (Va. Ct. App. 2002) (husband lost employment on September 10, 2001, and filed motion to reduce support on the same day); *Tatum v. Tatum*, 2000 WL 1774173 (Va. Ct. App. 2000) (wife left a nursing position to attend seminary in July, 1998; hearing on modification held in March of 1999); *Kaminsky v. Kaminsky*, 2002 WL 31802736 (Va. Fairfax County Cir. Ct. 2002) (husband left employment in March, 2000; modification proceedings filed in April, 2002).

8. See *Silberblatt v. Silberblatt*, 1999 WL 1129653, *3 (Va. Ct. App. en banc 1999) (relying in part on wife's earnings working as a nurse in husband's medical practice). There was no suggestion in the evidence that the wife was treated differently because she was married to the husband, and her earnings with the husband's practice were generally consistent with her earnings in other employment. If the evidence shows that the terms of employment

were influenced by the existence of the marital relationship, prior earnings working for a spouse's business should logically be less relevant. Such influence could exist where the spouse was given the job only because of the marital relationship, or where the existence of the marital relationship resulted in a salary which was either lower or higher than commercially reasonable.

9. See *Carr v. Carr*, 2002 WL 927601 at *4 (Va. Ct. App. 2002) ("[w]ife, a nurse, had not worked outside the home for fifteen years prior to the parties' separation"); *Grover v. Grover*, 2001 WL 1356495 at *2 (Va. Ct. App. 2001) (wife "had not worked as a medical technician for over twenty years").

10. *Balleweg v. Balleweg*, 2000 WL 511824 (Va. Loudoun County Cir. Ct. April 24, 2000).

11. *Joyes v. Payne*, 38 Va. App. 401, 551 S.E.2d 10 (2001) (part-time salary of \$80,990 per year was not evidence of full-time earning capacity of \$170,386 per year; imputing earnings only at the lower amount); see also *Hoegle v. Hoegle*, 2004 WL 351145 (Va. Fairfax County Cir. Ct. 2004) (wife was last employed one and one-half years ago at part-time position earning \$40,000 per year; refusing to impute income at rate higher than \$40,000 per year, on grounds that the wife's alcoholism and absence from the job market would prevent her from earning higher amount).

12. See *Srinivasan v. Srinivasan*, 10 Va. App. 728, 396 S.E.2d 675, 679 (1990) (error to impute income to wife, "an expert in oriental studies, concentrating in Indian art and religion, with a knowledge of the Sanskrit language"; no proof that position was presently available); *Pellegrin v. Pellegrin*, 2002 WL 119711 (Va. Ct. App. 2002) (expert testimony that general

market for mental health counselors was strong was not sufficient to show that a position is presently available, particularly where wife's had little experience in the field and her diligent job search had been unsuccessful); *Brooks v. Brooks*, 2001 WL 15701 at *1, *4 (Va. Ct. App. 2001) (wife had not worked as a teacher since 1977, though she had renewed her teaching certificate; "wife conceded that she could earn \$27,500 as a teacher, [but] there was no evidence presented regarding the availability of teaching positions in wife's field (English and drama)"; "We cannot say the court abused its discretion by refusing to impute income to wife before she had a reasonable period of time to re-enter the job market"); *Goldman v. Goldman*, 2003 WL 23272407, *3 (Va. Fairfax County Cir. Ct. 2003) (wife had not worked as a nurse since 1984, although she had retained her nursing license; rejecting physician-husband's argument that wife needed only a five-week refresher course to be immediately employable; under *Srinivasan*, refusing to impute income).

13. See *Turanis v. Turanis*, 2003 WL 941199, *6 (Va. Ct. App. 2003) ("wife was capable of earning \$100,000 to \$130,000 per year in the Washington, D.C., area, where she and husband resided at the time of their separation, and \$75,000 per year in the Atlanta, Georgia, area, where she moved after the parties' separation in order to be closer to her family"; trial court properly imputed income of \$75,000); see also *Reece v. Reece*, 22 Va. App. 368, 376, 470 S.E.2d 148, 152 (1996) (listing eight factors to be considered in determining whether refusal to accept employment in another geographic area is voluntary; on the facts, trial court properly refused to impute income to support

payor).

14. *Hanyok v. Hanyok*, 2002 WL 1837869 at *5- *6 (Va. Ct. App. 2002) (husband's testimony as to job listing on the Internet was inadmissible hearsay); *Grover v. Grover*, 2001 WL 1356495 at *2 (Va. Ct. App. 2001) (husband's opinions based upon advertisements and Internet research were unreliable).

15. Va. Code Ann. § 8.01-401.1 (2004).

16. Virginia allows limited duration support only in cases filed after July 1, 1998, but limited duration support was recognized in most other states roughly 15 to 30 years earlier. See Brett R. Turner, "Rehabilitative Alimony Reconsidered: The 'Second Wave' of Spousal Support Reform," 10 *Divorce Litigation* 185 (October 1998).

17. Brett R. Turner, "Earning Capacity and Spousal Support: The Uses and Abuses of Vocational Evidence in Divorce Cases," 14 *Divorce Litigation* 213 (December 2002).

18. Where employment is available but the salary is not proven, it may be possible to impute income at the statutory minimum wage. See *Bonin v. Bonin*, 2003 WL 22518409 (Va. Fairfax County Cir. Ct. 2003). The minimum wage will obviously be less than most spouses are capable of earning, and its use is proper only where proof exists that employment at minimum wage is actually available.

19. See *Hatloy v. Hatloy*, 41 Va. App. 667, 588 S.E.2d 389 (2003) (husband admitted that he could reasonably be expected to earn \$1,000 per month at one job and \$600 per month at another; court had little difficulty holding that his earning capacity was \$1,600 per month).

LEGAL FOCUS/DOMESTIC RELATIONS

You've Got to Sign Your Love Away*

by Glenn C. Lewis

Frank Morrison and Ann Vaden recently approached me about presenting a program on premarital agreements for the VBA and Virginia CLE. On looking into the matter, I soon learned nothing had ever been written or presented focusing on what I believed are the real-life problems and challenges we face in this important arena. I quickly accepted the assignment with two provisos:

1. There would be just one live presentation (with all the video replays they desired); and

2. We could focus on what I thought was important, whether or not it meshed with conventional wisdom.

Writing the materials and presenting this program were a

daunting challenge. More to the point, the feedback received that day and from dozens since has contributed to what has proven to be one of my most satisfying teaching adventures, ever. Almost without exception, comments consistently have included expressions of relief that someone else has shared the surprising pain, discomfort and profound sense of responsibility flowing from such representation.

It is unnecessary here (and impossible given constraints of space and time) to recount everything that leads to these conclusions and observations. However, it does seem worthwhile to share at least a glimpse of what may provoke such strong reactions and emotions in experienced and grizzled lawyers, some of whom have always appeared impervious to such distractions.

Why do sparks fly so quickly when

*With apologies to fans of the Beatles for the title of this monograph. Further, I wish to acknowledge Laura O. Pomeroy and Dennis Belcher of McGuireWoods LLP in Richmond, who deserve attribution for what was borrowed from their outstanding presentation: "Until Death Do Us Part: And then the premarital agreement controls." Finally, my thanks and credit to Greg Goldberg, currently a third year law student at the George Mason School of Law, and a law clerk with The Lewis Law Firm, for all his hard work in assisting with the production of this article, and the program and paper which spawned it.



Caution
As of: September 25, 2013 5:00 PM EDT

Niemiec v. Department of Soc. Servs., Div. of Child Support Enforcement ex rel. Niemiec

Court of Appeals of Virginia
June 2, 1998, Decided
Record No. 1744-97-4

Reporter: 27 Va. App. 446; 499 S.B.2d 576; 1998 Va. App. LEXIS 304

MARLENE NIEMIEC v. COMMONWEALTH OF VIRGINIA, DEPARTMENT OF SOCIAL SERVICES, DIVISION OF CHILD SUPPORT ENFORCEMENT, ex rel. JOHN R. NIEMIEC

Prior History: [***1] FROM THE CIRCUIT COURT OF FAIRFAX COUNTY. Arthur B. Viereg, Jr., Judge.

Disposition: Reversed.

Core Terms

trial court, child support, impute, support obligation, mother's, day care provider, imputed income, underemployed, part-time, deviate, divorce, correct amount, full-time

Case Summary

Procedural Posture

Defendant mother sought review of the decision from the Circuit Court of Fairfax County (Virginia), which granted plaintiff Commonwealth's motion to require her to pay child support to the father and departed upward from the guidelines by imputing income to her that she did not have.

Overview

The father, through the Commonwealth, petitioned for an order requiring the mother to pay child support and asserted that she was voluntarily underemployed. The trial court determined that she was employed only part time and imputed income to her as if she was employed on a full time basis, thereby necessitating an upward adjustment from the guidelines. On appeal the court reversed the decision and held that the imputation of income to the mother and the subsequent upward departure from the guidelines was erroneous. While the trial court was required to impute income to a parent who was voluntarily underemployed there was no evidence in the record that the mother was underemployed. Her previous occupation as a licensed day care provider was a part

time vocation and her income from that activity was not shown to be greater than her current monthly income. Additionally, it was uncontroverted that she had looked for better employment and that her current employer only permitted her to work part time.

Outcome

The court reversed the award of child support against the mother based on imputed income.

LexisNexis® Headnotes

Family Law > Child Support > General Overview
Family Law > Child Support > Support Obligations > General Overview
Family Law > ... > Support Obligations > Computation of Child Support > General Overview
Family Law > ... > Computation of Child Support > Imputed Income > General Overview
Family Law > ... > Computation of Child Support > Imputed Income > Voluntary Underemployment

HN1 In any proceeding to determine a parent's child support obligation, there is a rebuttable presumption that the amount determined in accordance with the statutory guidelines, *Va. Code Ann. § 20-108.2*, is the correct award. If the presumptive amount is unjust or inappropriate, the trial court may deviate from it based upon the factors found in *Va. Code Ann. § 20-108.1*. Following a divorce, a parent may not voluntarily pursue low paying employment to the detriment of support obligations to the children. As such, except as provided in *Va. Code Ann. § 20-108.1(B)(3)*, a trial court determining child support is required to impute income to a parent who is found to be voluntarily underemployed.

Family Law > Child Support > Support Obligations > General Overview
Family Law > ... > Support Obligations > Modification > General Overview

HN2 When asked to impute income to a parent, the trial court must consider the parent's earning capacity, financial resources, education and training, ability to secure such education and training, and other factors relevant to the equities of the parents and children. The burden is on the party seeking the imputation to prove that the

other parent was voluntarily foregoing more gainful employment, either by producing evidence of a higher-paying former job or by showing that more lucrative work was currently available. The evidence must be sufficient to enable the trial judge reasonably to project what amount could be anticipated. If a trial court imputes income to a party, it must make written findings explaining why imputed income to the party would make it unjust or inappropriate to award the presumptive amount of child support.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion
 Civil Procedure > ... > Standards of Review > Substantial Evidence > General Overview
 Family Law > Child Support > General Overview
 Family Law > Child Support > Support Obligations > General Overview
 Family Law > ... > Computation of Child Support > Imputed Income > General Overview

HN3 A trial court's decision to deviate from the presumptively correct amount of child support based upon imputed income will not be disturbed on appeal if it is supported by the evidence and the trial court has not otherwise abused its discretion. The trial court's award must be based upon circumstances in existence at the time of the award and not upon speculation or conjecture.

Counsel: Kevin E. Smith (Schumack & Smith, on briefs), for appellant.

William K. Wetzonis, Special Counsel (Nancy J. Crawford, Regional Special Counsel; Richard Cullen, Attorney General; William H. Hurd, Deputy Attorney General; Robert B. Cousins, Jr., Senior Assistant Attorney General; Craig M. Burshem, Regional Special Counsel, on brief), for appellee.

Judges: Present: Chief Judge Fitzpatrick, Judges Willis and Elder. **OPINION BY JUDGE LARRY G. ELDER**

Opinion by: LARRY G. ELDER

Opinion

[*448] [**578] **OPINION BY JUDGE LARRY G. ELDER**

Marlene Niemiec ("mother") appeals the trial court's order requiring her to pay \$ 440 per month in child support to John R. Niemiec ("father") through the Division of Child Support Enforcement ("division"). She contends the trial court erred when it imputed income to her when calculating her child support obligation. For the reasons that follow, we reverse.

[*449] I.

FACTS

The parties were married in 1984, had two daughters, and divorced in 1995. As part of its divorce decree, the trial court awarded custody of the parties' children to father and entered no order regarding child support.

On [***2] February 12, 1997, the Division of Child Support Enforcement ("division") filed a motion on behalf of father seeking a court order requiring mother to pay child support to father through the division. On June 20, 1997, the trial court held a hearing on the division's motion. The record in this case does not contain transcripts of the hearing, and the evidence presented by the parties has been summarized in a written statement of facts. According to this statement, father testified that mother worked part-time as a day care provider during the parties' marriage. He testified that she cared for between two and five children at a time and "received significant compensation."

Mother testified that, since December 1996, she had been employed part-time as an administrative assistant. She earned \$ 9 per hour, and her employer generally limited her to no more than twenty hours work per week. Occasionally, she had been allowed to work thirty hours per week. The parties stipulated that her current actual income was \$ 780 per month. Mother testified that, while the parties were married, she stayed at home to care for their children and "earned money as a day care provider for other children." [***3] She testified that, following the parties' divorce in November 1995, she actively looked and applied for "full-time work and better jobs." As of the date of the hearing, all of her attempts were unsuccessful. She testified that she was still a licensed day care provider in Virginia but that she had not sought employment in this field, either full time or part-time. Mother testified that she did not suffer from any physical or mental impairments that would prevent her from working full time.

[*450] A child support worksheet included in the record indicates that, based on the parties' current actual incomes, the presumptively correct amount of mother's child support obligation was \$ 252.05. The division argued that the trial court should depart upward from the guideline amount because mother was voluntarily underemployed. In support of its argument, the division calculated the presumptively correct amount of mother's obligation based on the assumption that she worked forty hours per week at her current hourly wage. Based on this amount of income, mother's child support obligation under the guidelines was \$ 463.94 per month.

At the conclusion of the presentation of evidence, the trial court [***4] found that the presumptively correct amount of mother's child support obligation was \$ 252. The trial court found that "there has been no evidence to demonstrate that [mother] is not able to work a full-time (40-hour) position." The trial court found that she was voluntarily underemployed and imputed additional income to her of \$ 780 per month. The trial court found that,

based on monthly income of \$ 1,560 per month, the presumptively correct amount of mother's child support obligation was \$ 464 per month. The trial court then found that mother had previously incurred debts to support the children and awarded her a monthly credit of \$ 24 to pay off these debts. It then ordered mother to pay father [**579] \$ 440 per month in child support through the division.

II.

IMPUTATION OF INCOME

Mother contends the trial court erred when it deviated upward from the presumptively correct amount of her child support obligation by imputing income to her. She argues the evidence was insufficient to support the trial court's finding that she was voluntarily underemployed. We agree.

HNI In any proceeding to determine a parent's child support obligation, "there is a rebuttable presumption that the amount determined [***5] in accordance with the statutory guidelines, [*451] Code § 20-108.2, is the correct award." Brooks v. Rogers, 18 Va. App. 585, 591, 445 S.E.2d 725, 728 (1994). If the presumptive amount is unjust or inappropriate, the trial court may deviate from it based upon the factors found in Code § 20-108.1. See Watkinson v. Henlev, 13 Va. App. 151, 158, 409 S.E.2d 470, 473-74 (1991). Following a divorce, a parent may not voluntarily pursue low paying employment "to the detriment of support obligations to the children." Brody v. Brody, 16 Va. App. 647, 651, 432 S.E.2d 20, 22 (1993); see also Auman v. Auman, 21 Va. App. 275, 279, 464 S.E.2d 154, 156 (1995). As such, except as provided in Code § 20-108.1(B)(3), a trial court determining child support is required to impute income to a parent who is found to be voluntarily underemployed. See Hamel v. Hamel, 18 Va. App. 10, 12, 441 S.E.2d 221, 222 (1994); see also Code § 20-108.1(B)(3), (11) (stating that "imputed income to a party who is voluntarily unemployed or voluntarily under-employed" and the "earning capacity . . . of each parent" are factors on which the trial court may justify a deviation from the presumptively correct [***6] amount of child support).

HN2 When asked to impute income to a parent, the trial court must consider the parent's earning capacity, financial resources, education and training, ability to secure such education and training, and other factors relevant to the equities of the parents and children. See Brooks, 18 Va. App. at 592, 445 S.E.2d at 729 (citing Code § 20-108.1(B)). The burden is on the party seeking the imputation to prove that the other parent was voluntarily foregoing more gainful employment, either by producing evidence of a higher-paying former job or by showing that more lucrative work was currently available. See Brody, 16 Va. App. at 651, 432 S.E.2d at 22; Hur v. Virginia Dept. of Social Services Div. of Child Support Enforcement ex rel. Klopp, 13 Va. App. 54, 61, 409 S.E.2d

454, 459 (1991); see also Antonelli v. Antonelli, 242 Va. 152, 154, 409 S.E.2d 117, 119 (1991). The evidence must be sufficient to "enable the trial judge reasonably to project what amount could be anticipated." Hur, 13 Va. App. at 61, 409 S.E.2d at 459. "If a trial court imputes income to a party, it must make [*452] written findings explaining why imputed income to the party would make [***7] it unjust or inappropriate to award the presumptive amount of child support." Brody, 16 Va. App. at 650, 432 S.E.2d at 21-22. *HN3* A trial court's decision to deviate from the presumptively correct amount of child support based upon imputed income will not be disturbed on appeal if it is supported by the evidence and the trial court has not otherwise abused its discretion. See Brooks, 18 Va. App. at 592, 445 S.E.2d at 729. The trial court's award must be "based upon 'circumstances in existence at the time of the award' and not upon speculation or conjecture." *Id.*

We hold that the evidence was insufficient to support the trial court's conclusion that mother was voluntarily underemployed. The summary of the evidence contained in the written statement of facts indicates that a finding that mother had voluntarily foregone higher-paying employment could only be made by supplementing the evidence presented with surmise and conjecture.

First, no evidence in the record indicates that mother previously left higher-paying employment. Although a trial court may impute income to a parent "based on evidence of recent past earnings," Brody, 16 Va. App. at 651, 432 S.E.2d at 22, [***8] the evidence of mother's past earnings did not establish that her remuneration from her current part-time job as an administrative [**580] assistant represented a reduction in income. The written statement of facts prepared by the parties states only that mother worked part-time as a day care provider during the parties' marriage and that she earned "significant compensation." The statement of facts does not quantify how "significant" mother's income was from this work. Moreover, both mother's prior work as a day care provider and her current job as an administrative assistant were part-time vocations, and the record does not otherwise indicate that her income as a day care provider was greater than her income as an administrative assistant.

[*453] In addition, the evidence regarding the employment opportunities currently available to mother does not support the trial court's finding that she could earn twice her current income by working forty hours per week. The record established that mother could not double her income by working forty hours per week for her current employer. Although mother earned \$ 9 per hour from her current job, the record established that her employer never permitted her [***9] to work more than twenty-to-thirty hours per week. In addition, the evidence in the record regarding mother's search for better-paying employment does not indicate that she failed to market herself adequately. Mother's uncontradicted testi-

27 Va. App. 446, *453; 499 S.E.2d 576, **580; 1998 Va. App. LEXIS 304, ***9

mony established that she had "actively looked and applied for full-time work and better jobs" since the parties' divorce and that all of her efforts had been unsuccessful. Although mother had not sought full-time work as a day care provider, a position for which she was still licensed, the record did not establish that such positions were available or that her earnings from full-

time work in this field would be greater than her current income.

For the foregoing reasons, we reverse the judgment of the trial court.

Reversed.

COURT OF APPEALS OF VIRGINIA

Present: Judges Humphreys, Russell and AtLee
Argued at Fredericksburg, Virginia

MICHAEL HUGH PALMER MURPHY

v. Record No. 2270-14-4

CORIE ANN MURPHY

OPINION BY
JUDGE RICHARD Y. ATLEE, JR.
DECEMBER 8, 2015

FROM THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY
Carroll A. Weimer, Jr., Judge

Adam D. Elfenbein for appellant.

Michael C. Miller (Cole Miller PLLC, on brief), for appellee.

Appellant Michael Hugh Palmer Murphy (“father”) and appellee Corie Ann Murphy (“mother”) divorced in 2013. The Circuit Court of Prince William County (“the trial court”) modified their custody, visitation, and child support agreement in November 2014, reducing mother’s support obligation to reflect a reduction in annual salary from \$170,000 to \$108,000 after she changed jobs. Father appeals the trial court’s modification of mother’s support obligation, arguing that it abused its discretion in failing to impute an annual income of \$170,000 to mother. Father contends that mother is voluntarily under-employed and should be required to pay child support based on an imputation of her prior income. We disagree and affirm.

I. FACTS

The parties divorced on December 20, 2013. The divorce decree incorporated, but did not merge, a marital settlement agreement (“the Agreement”). The parties have two minor sons, born in July 2005 and October 2008. Under the Agreement, father and mother shared joint legal custody, and father had primary physical custody. Father is a public school teacher. At the time

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of their divorce, mother made between \$140,000 and \$170,000 annually (an amount that varied because a substantial part of her income relied on commission) in a position that demanded long hours, including evenings and weekends. This position significantly limited the time the children spent with mother. After the divorce, mother took a position that offered traditional hours and the ability to work from home, but reduced her salary to approximately \$110,000 per year. In addition, father was reassigned to another school, which required a much longer commute and required him to put the children in daycare before and after school.

Anticipating mother's change in employment, the Agreement specified that her taking a new position would constitute a material change in circumstances that would be sufficient to satisfy the first prong under Keel v. Keel, 225 Va. 606, 611, 303 S.E.2d 917, 921 (1983).¹ In April 2014, mother filed a petition to modify the Agreement, asserting that there had been a material change based upon her new job, father's new job, and the sale of the marital residence. She initially requested modification to joint physical custody and a reduced child support obligation, and later amended to ask for primary physical custody. The trial court *pendente lite* modified the visitation schedule, but father retained primary physical custody. In that order, the trial court did not modify mother's support obligation, imputing \$170,000 in annual income to her. The final order entered on November 21, 2014 modified mother's income and support obligations to reflect her new salary, calculated to be \$108,000 annually, and awarded joint physical custody.

¹ To modify custody, a court must ask "first, has there been a change in circumstances since the most recent custody award; second, would a change in custody be in the best interests of the children." Keel, 225 Va. at 611, 303 S.E.2d at 921.

II. DISCUSSION AND ANALYSIS: SUPPORT MODIFICATION AND IMPUTED INCOME

A. Overview of the Law

“In any proceeding on the issue of determining child support . . . the court shall consider all evidence presented relevant to any issues joined in that proceeding. The court’s decision in any such proceeding shall be rendered upon the evidence relevant to each individual case.” Code § 20-108.1. In a modification proceeding, “[d]eviations from the presumptive support obligation [under Code § 20-108.2] must be supported by written findings which state why the application of the guidelines in the particular case would be unjust or inappropriate.” Richardson v. Richardson, 12 Va. App. 18, 21, 401 S.E.2d 894, 896 (1991).

One ground for deviation is the voluntary unemployment or under-employment of a party. “Income may be imputed ‘to a party who is voluntarily unemployed or voluntarily underemployed.’” Brody v. Brody, 16 Va. App. 647, 650, 432 S.E.2d 20, 22 (1993) (quoting Code § 20-108.1(B)(3)). A court may not impute income “to a custodial parent when a child is not in school, child care services are not available and the cost of such child care services are not included in the computation” Code § 20-108.1(B)(3). “The trial court’s decision to not impute income to the mother will be upheld on appeal unless it is ‘plainly wrong or unsupported by the evidence.’” Bennett v. Va. Dep’t of Soc. Servs., Div. of Child Support Enforcement ex rel. Bennett, 22 Va. App. 684, 691-92, 472 S.E.2d 668, 672 (1996) (quoting Sargent v. Sargent, 20 Va. App. 694, 703, 460 S.E.2d 596, 600 (1995)).

B. The Trial Court’s Discretion to Impute Income

A handful of this Court’s cases assert that a trial court is *required* to impute income whenever it finds a party is voluntarily unemployed or under-employed. All of these cases were decided under the pre-2006-amendment version of Code § 20-108.1. The 2006 amendments plainly supersede any “mandatory imputation” rule. Moreover, none of these cases presented

facts—like those we see here—where a parent voluntarily took a position with a lower salary,² but provided other non-monetary benefits so that a court could find the move was in the best interest of the children. These prior statements requiring courts to impute income create unnecessary confusion, conflicting with both statutory and case law stating that such imputation is discretionary. The law does not require a trial court to impute income in all cases of voluntary under-employment, as this would usurp the discretion expressly granted to the trial court by the legislature. We take this opportunity to clarify this important issue.

1. *The origin and evolution of the “mandatory imputation” rule*

The case that most explicitly mandated imputation, and upon which subsequent cases rely, is Hamel v. Hamel, 18 Va. App. 10, 441 S.E.2d 221 (1994), in which this Court wrote:

One of the grounds for deviation from the presumptive amount is the voluntary unemployment or underemployment of either parent. Code § 20-108.1(B)(3). *That code section does not expressly require the court to impute income to a parent found to be voluntarily unemployed, but such a reading is implicit both in the text of the statute itself and in this Court’s prior opinions interpreting that text. See, e.g., Brody v. Brody*, [16] Va. App. [647], [649], 432 S.E.2d 20, 21 (1993). Code § 20-108.1(B) mandates that “the court shall consider all evidence presented relevant to any issue joined in that proceeding” and that its “decision shall be rendered upon the evidence relevant to each individual case.” Clearly, “in setting an award of child support, the ‘primary issue before a trial judge is the welfare and best interest of the child, not the convenience or personal preference of a parent.’” Brody, [16] Va. App. at [651], 432 S.E.2d at 22 (quoting Hur v. Dep’t of Social Servs., 13 Va. App. 54, 60, 409 S.E.2d 454, 458 (1991)).

Id. at 12-13, 441 S.E.2d at 222 (emphasis added). Hamel failed to envision a scenario where a parent takes a position with a reduced salary, but the move is still in the best interest of the children. In sole support of the assertion that mandatory imputed income is “implicit” in the case

² There is no evidence in the record indicating that mother’s reduced salary was not sufficient to meet the needs of the children.

law, Hamel cited Brody, a case in which the Court reversed and remanded “[b]ecause the trial court required the father to prove that the mother was ‘voluntarily unemployed’ and to prove the nature of the employment available to her” Brody, 16 Va. App. at 652, 432 S.E.2d at 23 (citing Code § 20-108.1(B)(3)). In other words, this Court reversed because the trial court misallocated the burden of proof.³ Brody does not stand for the proposition that a court must impute income in all circumstances where a parent voluntarily makes a lower salary.

Hamel went on in its discussion of “implicit” mandatory imputation, stating that “case law holds that the risk of reduction in income as a result of a parent’s intentional act, even if done in good faith, is insufficient grounds for reducing the amount of support due under a pre-existing order.” Hamel, 18 Va. App. at 12-13, 441 S.E.2d at 222 (citing Antonelli v. Antonelli, 242 Va. 152, 155-56, 409 S.E.2d 117, 119-20 (1991)). This is not entirely accurate. In Antonelli, the Supreme Court reversed this Court when we overturned a trial court’s imputation of income to a father. The father had taken a new job that initially appeared to have a similar income potential, but the new position (as a commissioned stockbroker) ultimately provided less income because of a market crash. Our Supreme Court held that the trial court did not err in choosing to impute his previous income. The judge was permitted to find that the father assumed the risk of making less money, and that risk should not be borne by his children.

³ Brody is also commonly cited for the holding that a mother who leaves work to stay home with her children is nonetheless voluntarily unemployed and therefore subject to imputation. This holding is not unequivocal, however, and is best understood in view of the facts. In Brody, the mother quit her job to care for a child from her new marriage, not the children to whom she owed support. The parties had previously agreed to give the father (her ex-husband) sole custody of the children from her previous marriage. This Court emphasized that her decision to stop working was not in the best interests of the children to whom she owed a support obligation. In other words, leaving her job was “for the convenience or personal preference of a parent,” “which operates to the detriment of [her] children.” Brody, 16 Va. App. at 651, 432 S.E.2d at 22 (quoting Hur, 13 Va. App. at 60, 409 S.E.2d at 458). Again, this is plainly distinguishable from the facts here, where mother’s new schedule permitted her to spend time with and be available for the children to whom she owes support. Moreover, mother continued to support them.

Antonelli did not hold that the trial court was *required* to impute, merely that the judge, “in the exercise of judicial discretion,” was not prohibited from imputing income under those circumstances, and this Court erred in holding otherwise. Antonelli, 242 Va. at 156, 409 S.E.2d at 119. Hamel’s restatement of the holding ignored the posture of the case. This confusion was perpetuated in subsequent cases quoting Hamel. See, e.g., Niemiec v. Dep’t of Soc. Servs., Div. of Child Support Enforcement ex rel. Niemiec, 27 Va. App. 446, 451, 499 S.E.2d 576, 579 (1998); Va. Dep’t of Soc. Servs., Div. of Child Support Enforcement ex rel. Ewing v. Ewing, 22 Va. App. 466, 471, 470 S.E.2d 608, 610 (1996); Rawlings v. Rawlings, 20 Va. App. 663, 669, 460 S.E.2d 581, 583 (1995).

In the last of this line of cases from the 1990s, this Court discussed mandatory imputation in Bennett, 22 Va. App. at 692, 472 S.E.2d at 672. To reiterate, under the Code, a court may *not* impute income “to a custodial parent when a child is not in school, child care services are not available and the cost of such child care services are not included in the computation” Code § 20-108.1(B)(3). In Bennett, the Court, after cursorily reviewing the holdings in Hamel and Brody, inverted the statute’s language and stated that the “trial court *shall* impute income to a custodial parent who is voluntarily unemployed or underemployed where the age of the child and circumstances permit the custodial parent to be gainfully employed.” Bennett, 22 Va. App. at 692, 472 S.E.2d at 672 (emphasis added) (citing Code § 20-108.1(B)(3)). That reversal from prohibition to mandate was a logical error unless one assumes it incorporated Hamel’s language on “implicit” mandatory imputation. Ultimately, Bennett held that the trial court did not abuse its discretion in declining to impute, distinguishing the facts before the Court from those in

Hamel and Brody.⁴ In other words, despite incorporating this mandatory language, Bennett held that the trial court was *not* required to impute.

The mandatory imputation language finally resurfaced in Broadhead v. Broadhead, 51 Va. App. 170, 655 S.E.2d 748 (2008). Broadhead provides a fairly comprehensive description of previous case law addressing support modification:

“Once a child support award has been entered, only a showing of a material change in circumstances will justify modification of the support award. The moving party has the burden of proving a material change by a preponderance of the evidence.” Crabtree v. Crabtree, 17 Va. App. 81, 88, 435 S.E.2d 883, 888 (1993). “[A] party seeking a reduction in support payments has additional burdens: ‘He must make a full and clear disclosure relating to his ability to pay. *He must also show that his lack of ability to pay is not due to his own voluntary act or because of his neglect.*’” Edwards v. Lowry, 232 Va. 110, 112-13, 348 S.E.2d 259, 261 (1986) (emphasis added) (quoting Hammers v. Hammers, 216 Va. 30, 31-32, 216 S.E.2d 20, 21 (1975)). Thus, in order to prove a material change in circumstances that justifies a reduction in support, a parent “must establish that he is not ‘voluntarily unemployed or voluntarily under employed.’” Antonelli v. Antonelli, 242 Va. 152, 154, 409 S.E.2d 117, 119 (1991) (quoting Code § 20-108.1(B)(3)).

Id. at 179, 655 S.E.2d at 752 (quoting Ewing, 22 Va. App. at 470, 470 S.E.2d at 610).

Broadhead went on to describe the process for imputing income:

In considering the appropriate amount of child support to be paid, “a trial court . . . is required to impute income to a parent who is found to be voluntarily underemployed.” Niemiec v. Dep’t of Soc. Servs., 27 Va. App. 446, 451, 499 S.E.2d 576, 579 (1998) (citing Code § 20-108.1(B)(3)). In deciding whether income should be imputed to a parent, and the amount of such imputed income, “the trial court must ‘consider the [party’s] earning capacity, financial resources, education and training, ability to secure such education and training, and other factors relevant to the equities of the parents and the children.’” Blackburn v. Michael, 30 Va. App. 95, 102, 515 S.E.2d 780, 784 (1999) (quoting Niemiec, 27 Va. App. at

⁴ The child in Bennett was disabled and required high-level care, and the mother (who had not worked in ten years) needed to be available when called to take him home from school or daycare. In addition, the Court held that the father failed to introduce evidence of any jobs available to mother, much less those providing the necessary flexibility.

451, 499 S.E.2d at 579). The “court may [also] impute income based on evidence of recent past earnings.” Brody v. Brody, 16 Va. App. 647, 651, 432 S.E.2d 20, 22 (1993).

Id. Broadhead was decided under the pre-2006-amendment version of Code § 20-108.1,⁵ and is the last case to reiterate a rule requiring imputation.

2. *The 2006 amendments and “good faith and reasonableness”*

Code § 20-108.1(B) lists reasons a judge may elect to deviate from the presumptive guideline amount, because these factors “affect[] the obligation, the ability of each party to provide child support, and the best interests of the child.” Code § 20-108.1(B). As noted previously, one such factor permits imputing income “to a party who is voluntarily unemployed or voluntarily under-employed; provided that income may not be imputed to a custodial parent when a child is not in school, child care services are not available and the cost of such child care services are not included in the computation.” Code § 20-108.1(B)(3). In 2006, the legislature added the following language:

and provided further, that any consideration of imputed income based on a change in a party’s employment *shall be evaluated with consideration of the good faith and reasonableness of employment decisions* made by the party, including to attend and complete an educational or vocational program likely to maintain or increase the party’s earning potential[.]

Id. (emphasis added). Although a judge need only make written findings if he or she elects to impute income, this amendment demonstrates that, in considering “relevant evidence,” a judge must consider not only if a party is voluntarily under-employed, but also the good faith and reasonableness of the party’s employment decision. Imputation, therefore, cannot be mandatory in all cases of voluntary under-employment, as that would prevent a judge from performing this inquiry.

⁵ The appellant in Broadhead conceded that the pre-amendment version governed because he filed his motion to reduce support before the 2006 amendments went into effect.

Even those cases containing “mandatory” language speak first in terms of permission and discretion. See Bennett, 22 Va. App. at 691, 472 S.E.2d at 672 (“A trial court *has discretion* to impute income to either or both the custodial or noncustodial parent who is voluntarily unemployed” (emphasis added)); Brody, 16 Va. App. at 650, 432 S.E.2d at 22 (“Income *may* be imputed ‘to a party who is voluntarily unemployed or voluntarily underemployed.’” (emphasis added) (quoting Code § 20-108.1(B)(3)). These cases create avoidable confusion: on one hand, they say the trial court has discretion, and “may” impute income; on the other, they take that discretion away. There is no mistake in their results, but these statements regarding mandatory imputation muddy the law and deny judges the discretion the law affords them.⁶

III. APPLICATION

The trial court here followed the procedure set out by the legislature. In considering the appropriate amount of support, the judge had an obligation to consider all the relevant evidence, including the advantages children receive from having two active and present parents, mother’s availability in the event of emergencies, her ability to attend school events and take the children

⁶ The facts before us reveal how requiring imputation in all cases of voluntary under-employment is illogical. Because mother is the parent seeking modification, she bears the burden to show that one or more material changes in circumstances warrant modification and that she is not voluntarily un- or under-employed. Despite the phrasing in Broadhead which seems to equate these two burdens, many circumstances aside from her reduced salary could be material, including some we see here (the sale of the marital residence and a change in the other party’s employment). If mother meets the first burden, the trial court conducts modification proceedings to determine if and how it should modify support to address the changed circumstances.

Given that a modification proceeding is a “proceeding on the issue of determining child support,” Code § 20-108.1, the trial court faces a rebuttable presumption that the guideline amount—under which the trial court must *not* impute—is correct. In order to deviate from that amount and impute income, the trial court must make written findings to support the decision to impute, and in doing so, must explain why the application of the guidelines would be unjust or inappropriate. If mother fails to prove that she is not voluntarily under-employed, and imputation is thus required, the trial court is then also required to make written findings justifying the decision to impute, despite the absence of supporting evidence. The logical absurdity in this vanishes if we dispense with the contradictory and confusing language mandating imputation.

to doctor's appointments, reduced child care costs, and the other benefits that flowed to the children from her flexible schedule. In addition, mother's reduced salary still provided a generous income. Once the trial judge determined that changed circumstances and the best interests of the children justified modifying the support amount, Code § 20-108.1 required him to calculate the support amount using, among other figures, mother's current salary. If he wished to impute her previous income, he would have been required to make express findings on the record to support the deviation from the presumptive amount. Imputing income is the exception, not the rule. The trial judge did not err in declining to do so. Furthermore, in considering whether to impute income, the judge was required to consider the "good faith and reasonableness" of mother's decision. The record presents numerous reasons he may have concluded her decision was both reasonable and in good faith. Accordingly, we see no error in the decision not to impute.

IV. CONCLUSION

We find that the trial court did not err in declining to impute income to mother. Its decision was neither plainly wrong nor unsupported by the evidence. To the extent this Court has previously stated or implied that a trial court *must* impute income in any circumstance where a parent has voluntarily taken a position with a reduced salary, without regard for the good faith and reasonableness of the decision, or other factors affecting the best interests of the children, those holdings⁷ are superseded by statutory amendment.

Affirmed.

⁷ See Broadhead, 51 Va. App. 170, 655 S.E.2d 748; Niemiec, 27 Va. App. 446, 499 S.E.2d 576; Bennett, 22 Va. App. 684, 472 S.E.2d 668; Ewing, 22 Va. App. 466, 470 S.E.2d 608; Rawlings, 20 Va. App. 663, 460 S.E.2d 581; Hamel, 18 Va. App. 10, 441 S.E.2d 221.



ASK THE EXPERT

The Vocational Evaluation Process in Family Law: Formulating Opinions

*By H. Gray Broughton
M.Ed., CRC, CCM, CRP
BAI@Broughtoninc.com*

In divorce cases I am often asked to give an opinion as to the husband's, wife's or both parties' employability, placeability and earning capacity.

Employability¹ is the ability to work in specific occupations. The person must have the knowledge, skills and abilities ("KSAs") to perform the duties of the job. This addresses the level at which someone can work and depends upon their past work history and experience. Other considerations are age, education, and Residual Functional Capacity, if they have any physical or mental limitations.

Residual Functional Capacity ("RFC") is defined as what an individual can do in a work setting despite the functional limitations and environmental restrictions imposed by his/her medically exertional and non-exertional determinable impairments. Also, it is important to know if they have a valid driver's license, have a criminal history, had any military service, are a U.S. citizen, hold a security clearance and/or are taking medications that affect their ability to work. If they have children, it is important to gather information about them, including ages, schedules, special needs, etc.

Placeability² is defined as a person's potential to be hired and placed within a given job in the local Labor Market and availability to interview and work.

Earning capacity³ is defined as the potential of a worker, possessing the KSAs to work and earn money in a competitive Labor Market. The most commonly accepted definitions of earning capacity involve the amount of money a person can earn because of age, education, training, work experience and Residual

Functional Capacity.

I am often given information to review, such as a resume, answers to interrogatories, tax returns, employment records, educational records, court pleadings, depositions and medical records. Typically, I am requested to meet with the person being evaluated to conduct a Vocational Diagnostic Interview. If the opposing side does not agree to the interview, a court order can be requested requiring that I be allowed to interview the person.

During the Vocational Diagnostic Interview, I obtain information to determine the Evaluatee's employability, placeability, and earning capacity, such as: age, citizenship, address, children, education, work history, if they have a valid driver's license, military service, criminal arrests or convictions, computer skills, what type of work they would like to do and whether there are suitable jobs available in the current Labor Market in the geographic area in which they live. I ask them if they are currently looking for employment and ask to see a record of their job search efforts. I also ask if they have any physical or mental limitations that affect their ability to perform full time gainful employment on a sustained basis.

If there are medical issues, the following questions may need to be asked:

- Previous illnesses, injuries, operations
- Medications
- Physical / mental status
- Physical limitations
- Physical status (occurrence of pain)

- Doctors/treatments
- Special problems with the environment

Some of this information may not be available or necessary, depending on the case. Sometimes I discuss the case with the other spouse and get their perspective on information given to me during the interview of their spouse to check for inconsistencies. I also review relevant case law from the attorney that retained me, if needed.

After I have reviewed the necessary information, conducted a Vocational Diagnostic Interview, determine the person's transferrable skills and best vocational path, I conduct Labor Market Research and a Labor Market Search specific to the individual. I identify suitable and appropriate jobs for the individual, which must be a reasonable distance from their home and currently available. Also, the Evaluatee must meet the requirements and have the qualifications, knowledge, skills and abilities to perform the job. The salary for the jobs must also be determined.

The Labor Market Search needs to meet the Kerner Criteria⁴ as well as the Niemiec Test⁵. The Kerner Criteria defines "job availability" as something more than the mere existence of jobs within an individual's physical capacity, but less than an actual job offer. It is "the reasonable opportunity to be hired if the jobs were open and applications for employment were being taken".

The Niemiec Test requires:

- A list of jobs for which the job candidate has the KSAs to perform and that are in their Labor Market and currently available.
- An analysis from the expert of the employability and placeability factors of the case showing whether the job candidate has the transferrable skills to perform the job and would be a qualified applicant for the job.
- Salary information displayed in the appendix of jobs identified. The salary can come from the job posting (if posted) and other viable and reliable sources such as the Bureau of Labor Statistics, Virginia Employment Commission, Economic

Research Institute, Salary.com, Indeed.com, *etc.*

I then determine my vocational opinions on the case. These are based on the information I reviewed, the Vocational Diagnostic Interview I conducted, my research specific to the case, and my years of experience in the field of Vocational Rehabilitation, job placement, training, and education. All my opinions are offered to a reasonable degree of vocational certainty, which may include:

- Is the person employable and placeable in full time gainful employment on a sustained basis? If not, can they work part-time?
- What is their best vocational path option?
- Does the person have the knowledge, skills and abilities for this type of work?
- Is a license or certification is required to do the work and do they have the required license and/or certification to qualify for work in this profession?
- Are there these types of jobs available in the geographic areas in which they live?
- Are there specific job openings for this type of job?
- What is the salary for the jobs listed (posted on job opening, Bureau of Labor Statistics, Economic Research Institute, Indeed.com, Salary.com, Virginia Employment Commission, *etc.*)? The salaries need to be specific to the area in which the job is located (post salaries with the job list).
- What is the Evaluatee's earning capacity?
Example: Earning capacity is defined as the ability to earn money on a sustained basis in the current Labor Market (*e.g.*, Ms. Smith's earning capacity is \$50,000 (\$40,000 to \$60,000 range per year).

Each case is different to some degree and opinions need to be tailored to address the issues of the case.

There are times when the Court wants to know the methodology used in formulating my opinions. Below is an outline of my methodology.

- (1) Collecting Data – Conducting a Vocational Diagnostic Interview, reviewing information such as answers to interrogatories, medical records,

depositions, tax returns (W-2 forms), employment records, job descriptions, etc. Not all of these are needed; each case is different.

- (2) Synthesizing/reviewing information with an emphasis on employment.
- (3) Identifying problems – For example, medical problems may cause the person being evaluated to have work restrictions.
- (4) Conducting Labor Market Research and a Labor Market Search specific to the individual being vocationally assessed.
- (5) Determining how problems affect the person being evaluated, their transferrable skills, best vocational option, and deciding whether vocational testing is needed.
- (6) Formulating vocational expert opinions. Opinions reflect the person's employability, placeability, and earning capacity.

The recommendations I give to find a job are:

- (1) Activate their network of friends, associates, and other similar acquaintances in business to generate employment recommendations and/or employer suggestions;
- (2) Prepare a highly focused resume and cover letter and begin seeking employment;
- (3) Start contacting organizations and individuals identified on the network list and keep a record of job contacts;
- (4) Find ways to keep up an upbeat, motivated and de-stressed attitude while looking for a job;
- (5) Register with several executive recruiting organizations and consider hiring a recruiter / executive search firm;
- (6) Get letters of recommendation from previous employers and develop a "strong" list of references; and
- (7) Contact executive search firms and recruiters and constantly contact potential employers by mail, email and telephone.

Finally, I prepare a report, which includes my opinions as to the person's employability, placeability and earning capacity. All my opinions

are to a reasonable degree of vocational certainty. My report includes an Introduction, List of Information Reviewed, Methodology and Qualifications, Medical Section, if needed, Vocational Section, and Opinions. ♦

Endnotes

1. Employability is the ability to: (1) meet worker requirements, (2) have access to work KSA's and (3) have the traits or occupational familiarity necessary to perform a job or the kinds and types of jobs based on age, education, work experience and residual functional capacity (Field, 1999, pp. I-6; 1987; Field & Weed, 1998; Weed, 2000; 1990).
2. Placeability is defined as the worker's potential to be hired or placed within a given job in the local labor market (Field, 1999, p. I-12; 1987; Field & Weed, 1999; Weed, 2000, 1990) and by one's availability to interview and work (Deutsch & Sawyer, 2000; 1985).
3. Earning Capacity is defined as the potential of a worker, possessing knowledge, skills, and abilities (KSA's) to work and earn money in a competitive labor market. The most commonly accepted definitions of earning capacity involve the amount of money a person can earn because of age, education, training, work experience and residual functional capacity (Duetsch & Sawyer, 1985; 1997; Field, Weed & Grimes, 1986; Field and Sink 1981).
4. Kerner criteria is derived from a U.S. Circuit Court of Appeals for the fifth Circuit Court, *Gardner v. Smith*, 368F.2d 77. The U.S. Circuit Court of Appeals for the fifth Circuit and is published to vocational experts by the Social Security Administration-Office of Hearings and Appeals by Hannings, Ash, & Sinick (1972). Kerner criteria sources: *Gardner v. Smith* 368F.2d 77 (1966), U.S. Circuit Court of Appeals for the fifth Circuit. Hannings, R.B., Ash, P. & Snick D. (1972). Forensic psychology in disability adjudication: A decade of experience, Vocational Experts in the Bureau of Hearings and Appeals. Washington, DC: US Department of Health, Education and Welfare, Social Security Administration: Bureau of Hearings and Appeals, DHEW Publication (SSA) 72-10284.
5. Niemiec sources: Turner, B.R. (2005). Imputation of income to a party who is seeking spousal support. The Virginia Bar Association News Journal (December 2004/January 2005), 16-18. *Niemiec v. Commonwealth ex rel. Niemiec*, 27 VA App.446, 451, 499 S.E. 2d 567 579 (1988), Sinsabaugh, L.L. (2007, March 31), Seminar aide for participants interactive report writing for different forensic venue: Vocational criteria. American Board of Vocational Experts/Presentation, Spring Conference Seattle, WA: ABVE.

INTERVIEW WORKSHEET

Personal Data

Client's Name: _____ SS#: _____
Address: _____ Accessible to Public Transport: _____
City: _____ State: _____ Zip: _____
Date of Birth: _____ Age: _____ Sex: _____ Phone: _____
Place of Interview - Home: _____ Office: _____ Other: _____ City: _____
Interviewing Counselor: _____ Case #: _____ Interview Date: _____
Referral Source: _____ Referral Date: _____
Address: _____ City: _____
Claim #: _____ File #: _____ Case Manager: _____

Family Background

Place of Birth: _____ How Long at Present Location?: _____
Spouse's Name: _____ Occupation: _____ Age: _____
Marital Status: _____ Previous Marriages? Yes: _____ No: _____ Date of Present Marriage: _____
Number of Children: _____ At Home: _____ Names and Ages: _____

Military Service

Branch: _____ Years Served: _____ Type discharge: _____
Occupation & duties: _____
Special training: _____
Service connected disability: _____ Percentage: _____

Miscellaneous Data

Driver's License #: _____ Chauffeur's License #: _____
Hobbies/Leisure Time Activities: _____

Arrests/Convictions: _____

Education

Last Grade Completed: _____ Name of School: _____
Degree / Certification: _____ Year: _____
Special Training: _____
Location: _____ Year: _____

Employment

Employer when Injured: _____ Job Title: _____

Address: _____ City: _____

Date Started: _____ Date Left: _____ Reason: _____

Supervisor: _____ Salary: _____

Union Member? Yes: ___ No: ___ Name of Union: _____

On previous job was client required to:

Walk: _____	How far: _____	Drive: _____	How far: _____
Stand: _____	How long: _____	Balance: _____	How long: _____
Sit: _____	How long: _____	Carry: _____	How much: _____
Lift: _____	How much: _____	Push: _____	How far: _____
Bend: _____	How often: _____	Pull: _____	How far: _____
Kneel: _____	How often: _____	Stoop: _____	How often: _____
Squat: _____	How often: _____	Handle: _____	How often: _____
Climb: _____	How much: _____	Work	
Reach: _____	How far: _____	overtime: _____	How much: _____

Employer Comments: _____

Other Work Experience (Begin with most recent job first)

Employer: _____ Job Title: _____

Address: _____ City: _____

Date Started: _____ Date Left/Reason: _____ Salary: _____

Supervisor: _____ Best Skill: _____

Specific Duties: _____

Union Member: Yes: ___ No: ___ Name of Union: _____

Employer: _____ Job Title: _____

Address: _____ City: _____

Date Started: _____ Date Left/Reason: _____ Salary: _____

Supervisor: _____ Best Skill: _____

Specific Duties: _____

Union Member: Yes: ___ No: ___ Name of Union: _____

Employer: _____ Job Title: _____
Address: _____ City: _____
Date Started: _____ Date Left/Reason: _____ Salary: _____
Supervisor: _____ Best Skill: _____
Specific Duties: _____

Union Member: Yes: ___ No: ___ Name of Union: _____

Vocational Information

Employment Interests: _____

Business Practices with which client is familiar (describe):

Bookkeeping: _____

Inventory Control: _____

Shipping/Receiving: _____

Scheduling: _____

Supervising: _____

Instructing: _____

Other: _____

Machines/Equipment with which client is familiar and/or has had experience (describe):

Office Machines: _____

Farm Equipment: _____

Construction Equipment: _____

Hand Tools: _____

Transportation Equipment: _____

Machine/Shop Tools: _____

Special license or certificate (describe):

Possession of special tools or equipment (describe):

Available for work (date): _____ Salary requirements: _____ Minimum wage: _____

Means of transportation: _____ Willing to commute: _____ Willing to relocate: _____

Financial Status

INCOME

EXPENSES

Relatives \$: _____ Month
 Welfare \$: _____ Month
 V.A. \$: _____ Month
 D.V.R. \$: _____ Month
 Cash on hand \$: _____ Month
 S.S. \$: _____ Month
 Pension \$: _____ Month
 W.C. \$: _____ Month
 Other \$: _____ Month

Auto \$: _____ Month
 Personal \$: _____ Month
 Insurance \$: _____ Month
 Telephone \$: _____ Month
 Counselor \$: _____ Month
 Medicine \$: _____ Month
 Utilities \$: _____ Month
 Rent \$: _____ Month
 Food \$: _____ Month
 Transportation \$: _____ Month
 Miscellaneous \$: _____ Month

Total income \$: _____ Month

Total expenses \$: _____ Month

Personal Appearance

Height: _____ Weight (Pre injury): _____ Weight (Current): _____ Grooming: _____

Outward signs of injury/disabling condition: _____

Mobility - Limp: _____ Stiffness: _____ Posture: _____ Other: _____

Describe: _____

Prosthetic aid (type): _____ Problems: _____

Demonstration of pain - Walking: _____ Standing: _____ Sitting: _____ Arising: _____

Visible scars - Yes: _____ No: _____ Location: _____

Physical/Mental Status Previous Problems: (Illness, injuries, operations)

Date	Incidents	Residual Problems

Physical/Mental Status Current Problems

Item	No	Yes	Extent
Headaches/Dizziness			
Chest Pain/Discomfort			
Back Pain/Discomfort			
Stomach/Digestive Problems			
Urination/Elimination			
Sexual Dysfunction			
Other _____			

Subjective Complaints: _____

Physical Status: Occurrence of Pain

Pain Location	Pain Frequency	Pain Intensity

Present Physical/Mental Treatment

Doctors/Treatments

Doctor	Treatment	Date

Special techniques to relieve problems – (hot baths, PT, OT, exercise, traction):

Present Medication/Dosages:

Physician Comments:

Special problems with environment:

Condition	No	Yes	Extent
Inside			
Outside			
Heat			
Cold			
Wet/Humid			
Dusty/Dirty			
Noisy			
Heights			
Vibrations			

Physical Limitations

Activity	None	Yes	Extent
Lifting			
Talking			
Hearing			
Sitting			
Climbing			
Balancing			
Stooping			
Breathing			
Driving			
Feeling			
Reaching			
Seeing			
Standing			
Walking			
Bending			
Kneeling			
Sleeping			

Emotional Status: (Include emotional appearance, depression, anxiety, anger, etc.): _____

Motivation: (Include client's effort to recall information, attitude toward interviewer, outside issues affecting interview, pertinent observations and body language): _____

Impressions & Comments: _____

Date: _____

Consultant: _____

TRANSPARENCY IN LIFE CARE PLANS

BY: SUSAN RIDDICK-GRISHAM, RN, BA, CLCP

Susan Riddick-Grisham, RN, BA, CLCP

3126 West Cary Street, #137

Richmond, Virginia 23221

1-800-252-1094

(f) 804-559-6522

Cell: 804-310-5239

Place and Date of Birth:

Binghamton, New York

January 20, 1954

Education:

Elementary and High School

Windsor, New York

Crouse Irving Memorial School of Nursing

Syracuse, New York

Diploma in Nursing 1976

B.A. -Business

American Intercontinental University

Dunwoody, Georgia 2004

1976-Present Continuing education units/hours in nursing, rehabilitation,
case management and life care planning

Licensure:

Commonwealth of Virginia

State Board of Nursing #0001083200

Certifications:

Certified Life Care Planner

Organizations:

International Academy of Life Care Planners

International Association of Rehabilitation Professionals

North American Brain Injury Society

Brain Injury Association of Virginia

Appointments/Honors:

- Recipient of 2011 Lifetime Achievement award from the Board of Commissioners of the International Commission on Health Care Certification
- Recipient of 2010 Dorland Health People Award in the category of life care planning
- Recipient of 2006 Lifetime Achievement Award in recognition of dedication and commitment to the practice of life care planning given by International Academy of Life Care Planners, The Foundation for Life Care Planning Research, the International Association of Rehabilitation Professionals, Georgia State University, Virginia Commonwealth University & MediPro Seminars
- Vice-Chair Foundation for Life Care Planning Research 200 -2014
- Chair Foundation for Life Care Planning Research 2013-3/2016
- Board of Directors Virginia Birth-Related Neurological Injury Compensation Program 2009-6/2011
- Vice-Chair Virginia Birth-Related Neurological Injury Compensation Program 2010-6/2011
- Board of Directors International Association of Rehabilitation Professionals 2009-2013
- Section Representative International Academy of Life Care Planners 2009-2013
- Section Board International Academy of Life Care Planners 2013-2014
- Advisory Board Sarah Jane Brain Foundation (present)
- Chair-Life Care Planning Summit 2002 & 2006
- Advisor-Life Care Planning Summit 2008
- Educational Committee-International Symposium on Life Care Planning-Yearly since 2000-2015
- Co-Chair Educational Committee-International Symposium on Life Care Planning-2009, 2010,2011,2012, 2013, 2014,2015
- International Academy of Life Care Planners Standards of Practice Committee 2014-2015 Third Edition
- Recipient of 2016 Sheri Jasper Memorial Award given by International Symposium on Life Care Planning, International Commission on Health Care Certification, Foundation for Life Care Planning Research, International Association of Rehabilitation Professionals, International Academy of Life Care Planning
- 2016 President's Commendation awarded by International Association of Rehabilitation Professionals

Presentations:

The Use of Nurses in Auto Liability Cases- Crawford and Company, Richmond, Virginia, 1983

The Patient with Attorney Representation-Richmond Chapter of Occupational Therapists, Richmond, Virginia, 1987

Life Care Planning for Traumatic Brain Injury Patients-Tidewater Head Injury Association, 1988 & 1989

What is a Model System of Care- panel, The Postgraduate Course on Rehabilitation of the Brain Injured Adult and Child, Medical College of Virginia, Williamsburg, Virginia, 1990

Reimbursement and Funding Issues in TBI Rehabilitation- panel, The Postgraduate Course in Rehabilitation of the Brain Injured Adult and Child, Medical College of Virginia, Williamsburg, Virginia, 1990

An Overview of Case Management Concepts- Medical College of Virginia Case Management Certification Training Programs in Traumatic Brain Injury, January 1991

Life Care Planning- Medical College of Virginia Case Management Certification Training Programs in Traumatic Brain Injury, January 1991

Medical Case Management Issues Involved in Working with the Individuals Who Have Sustained A Traumatic Brain Injury- Medical College of Virginia, 1991

Life Care Planning for TBI Patients Medical College of Virginia, Case Management Issues in Traumatic Brain Injury: Coma to Community, March 1991

The Medical Aspects of Traumatic Brain Injury and Spinal Cord Injury, Life Care Planning- Crawford & Company Health and Rehabilitation Services, Advanced Consultant Training, Atlanta, Georgia, March 1991

Teamwork at Work: Interpersonal Case Management- Individual Case Management Association Third Annual Conference, Dallas, Texas, July 1991.

Life Care Planning - Pediatric TBI- Medical College of Virginia TBI Case Management Training Program, November 1991

Life Care Planning - Adult TBI- Medical College of Virginia TBI Case Management Training Program, November 1991

Funding Issues in TBI-(panel discussion), Medical College of Virginia TBI Case Management Training Program, November 1991

The Medical Aspects of Traumatic Brain Injury and Spinal Cord Injury, Life Care Planning- Crawford & Company Health and Rehabilitation

Services, Advanced Consultant Training, Atlanta, Georgia, December 1991

Expanding Your Rehabilitation Practice - Developing Medical Legal Referrals- Third Annual Northwest Medical Case Management Conference, Portland, Oregon, February 1992

The Medical Case Manager as a Life Care Planner- Third Annual Northwest Medical Case Management Conference, Portland, Oregon, February 1992

Basic Overview of Traumatic Brain Injury, Spinal Cord Injury and Multiple Amputation Cases- Crawford & Company Health & Rehabilitation Services, Advanced Consultant Training, Atlanta, Georgia, March 1992

Life Care Planning-Crawford & Company Health & Rehabilitation Services, Advanced Consultant Training, Atlanta, Georgia, March 1992

Life Care Planning-Physical Rehab Grand Rounds, Medical College of Virginia, April 1992

Case Managers and Therapists: Developing a Therapeutic Alliance- co-presented with Robin McNeny, OTR, Practical Strategies for Scientifically Based Rehabilitation, The Postgraduate Course on Rehabilitation of the Brain Injured Adult and Child, Medical College of Virginia, Williamsburg, Virginia, June 1992

Funding Issues in TBI-Plenary session panel-The Postgraduate Course on Rehabilitation of the Brain Injured Adult and Child, Medical College of Virginia, Williamsburg, Virginia, June 1992

Life Care Planning for Adult and Pediatric Client-Practical Strategies for Scientifically Based Rehabilitation-The Postgraduate Course on Rehabilitation of the Brain Injured Adult and Child, Medical College of Virginia, Williamsburg, Virginia, June 1992

Ethical Issues in Dealing with Catastrophic Injuries - Is It Really Teamwork- Guest Speaker, Greater Washington Rehabilitation Hospital and Lake Erie Institute of Rehabilitation, Silver Springs, Maryland, May 1993

Life Care Planning - A Step by Step Guide- ICMA (Individual Case Management Association) Fifth Annual Conference, Orlando, Florida, September 1993

The Medical Aspects of Traumatic Brain Injury and Spinal Cord Injury, Life Care Planning-Crawford & Company Health & Rehabilitation Services, Advanced Consultant Training, Atlanta, Georgia, December 1993

Case Management in the '90s- Association of Rehabilitation Nurses, Charleston, South Carolina, March 1994

Defending a Life Care Plan: How to Get the Best Results-American Association of Legal Nurse Consultants, Fifth Annual National Conference, Houston, Texas, April 1994

Brain Injury Services Workshop, Pediatric Case Study, Presenter, Virginia Department of Rehabilitative Services, Charlottesville, Virginia, April 1994

Expert Testimony: A Practical Guide for Rehabilitation Professionals-American Congress of Rehabilitation Medicine, 71st Annual Meeting, presented by Jeffrey S. Kreutzer, Ph.D., Susan N. Riddick, RN, CCM, and Nathan D. Zasler, MD, Minneapolis, Minnesota, June 1994

Business Opportunities for Future Growth- NARPPS National Conference, San Francisco, California, June 1995

Medical Issues Associated with Life Care Planning- NARPPS Advanced Pediatric Life Care Planning, San Diego, California, December 1995

First Ever Review and Prep Course for Certification in Life Care Planning- San Francisco, California, March 1996

The Role of the Life Care Planning Expert-U.S. Justice Department, Advanced Medical Malpractice Seminar Columbia, South Carolina, May 2-4, 2000

Life Care Planning, Expanding Your Practice- 6hour workshop for CARRP (California Association of Rehabilitation and Re-employment Professionals), Monterey, California, September 21, 2000

Best practice Strategies in Brain Injury Case Management- CMSA (Case Management Society of America) South Bay Chapter, San Jose, California, February 9, 2001

Comprehensive Standards Framework Applied to Medical Life Care Plans- University of Florida and Intelicus, Special Advanced Forensic Program, Orlando, Florida, March 24-25, 2001

Ethical Considerations in Life Care Planning and Expert Witness Testimony-panel presentation, University of Florida and Intelicus, Special Advanced Forensic Program, Orlando, Florida, March 24-25, 2001

Life Expectancy Issues in TBI, SCI,CP Cases-presented with David Strauss, PhD, FASA and Ann Neulicht, Ph.D., CLCP, LPC, CRC, CVE, CDMS, DABVE, an online continuing education program provided by mdexonline.com, March 28, 2001

New Markets for Life Care Planners- Intelicus 6th Annual Life Care Planning Conference, October 20, 2001 New Orleans, Louisiana

Life Care Planning...The Next Generation-IARP Forensic Conference, December 12, 2001, New Orleans, Louisiana

Use of the Life Care Planner in Brain Damaged Baby Cases- Lecturer and panel participant, an online continuing education program provided by mdexonline.com, February 6, 2002

Understanding the Life Care Plan Process: Strategies and Guidelines- presented with Ann Neulicht, Ph.D., CLCP, LPC, CRC, CVE, CDMS, DABVE, 4 hr pre-conference program, IARP Annual Conference, April 18, 2002

Getting Involved-Life Care Planning Advanced Practice Program by Intelicus/University of Florida, program coordinator and speaker, Chicago, Illinois, May 18, 2002

Life Care Planning Summit 2002" Program Chair, professional meeting of Life Care Planners, Chicago, Illinois, May 19, 2002

Life Care Planning As A Tool for Pediatric Case Management- Virginia Association of Rehabilitation Nurses, Children's Hospital, Richmond, Virginia, April 4, 2003

Strength-Based Life Care Planning. International Association of Rehabilitation Professionals Annual Forensic Meeting, San Antonio, TX Nov. 2004

Life Care Planning for the Pediatric Patient- Presentation to the Canadian Institute of Life Care Planners. Toronto, ON. April 7, 2005

Ethical Issues in Brain Injury Litigation: Life Care Planning-panel. Contemporary Forums, Washington, DC April 27, 2005

Establishing the Life Care Plan and Costs of Care-Contemporary Forums. Washington, DC April 28, 2005

Ethical Issues in Brain Injury Litigation: Life Care Planning: panel - Contemporary Forums. Seattle, Washington, May 9, 2005

Life Care Planning in Brain Injury Cases-Contemporary Forums. Seattle, Washington, May 13, 2005

Life Care Planning Summit 2006-Program Chair, professional meeting of Life Care Planners, Chicago, Illinois, May 2006

Pediatric Life Care Planning and Case Management- Case Management Society of America (Virginia), Richmond, VA, November 8, 2007

Life Care Plan Practice Survey-International Symposium on Life Care Planning, Chicago, IL, September 26, 2009

Implementing the Life Care Plan: Working with Trust Managers After Mediation, Chicago, IL, September 26, 2009

Life Care Planning-Central Virginia Association of Legal Nurse Consultants, Richmond, VA, October 2009

Standard of Care: Making Sense of Practice, Ethical, Legal, and Credentialing Guidelines in Forensic Rehabilitation, Memphis, TN, November 2009

Life Care Planning: Science or Science Fiction: Is There An Evidenced Basis-Invited Speaker, 8th World Congress on Brain Injury, Washington, DC, March 2010

Life Care Planning-Invited Speaker 35th Annual Meeting American Board of Professional Liability Attorneys, Miami, FL, May 2014

The Importance of productive activity in life care planning, Panel presentation Stewart, D., Reid, C. Riddick-Grisham, S., & Cyphers, G., International Symposium on Life Care Planning, Minneapolis, MN, September 2014

Avoiding a Motion to Preclude a Life Care Plan, Reid, C. & Riddick-Grisham, S., International Association of Rehabilitation Professionals, Charlotte, NC, 2018

Articles/Book Chapters:

Weed R. & Riddick, S. (1992). Life care plans as a case management tool. *The Individual Case Manager Magazine*, 3(1), 26-35. (Feature Article)

Riddick, S. & Roughan, J., (October 1992). The ultimate discharge plan; the case management approach to life care planning; *Continuing Care Magazine*. (Feature article.)

Riddick, S. & Zasler, N. (October 1992). Case managers affect the long-term interests of clients. *Virginia Lawyers Weekly*

Riddick, S. (1993). Life care planning. *Case Management for Health Care Professionals*, Chapter 10. Precept Press.

Riddick - Grisham, S. & Weed, R (1996). Life care planning process for managing catastrophically impaired patient; *Case Studies in Nursing Case Management*, Chapter 5. Aspen Publishers.

- Waaland, P. & Riddick- Grisham, S. (1996). School services: a resource often utilized in pediatric life care planning, *Inside Life Care Planning* Vol1.No 6
- Riddick-Grisham, S (1996). Personal Interview, *Inside Life Care Planning* Vol1. No 6
- Riddick-Grisham, S & Weed, R. (1999). The Role of the Nurse Case Manager in Life Care Planning, In R. Weed (Ed) *Life Care Planning and Case Management Handbook* 1st ed, Chapter 3, Boca Raton, FL: CRC Press
- Neulicht, A, Riddick-Grisham, S, Hinton, L, Costantini, P, Thomas, R & Goodrich, B. (2002). Life Care Plan Survey 2001: process, methods and protocols. *The Journal of Life Care Planning*, invited article, Athens, GA: Elliott & Fitzpatrick
- Riddick-Grisham, S. (2003). Life care planning summit 2002. *Journal of Life Care Planning*, 2(2), 73 – 101, Athens, GA: Elliott & Fitzpatrick
- Riddick-Grisham, S. (2004). The Role of the nurse case manager in life care planning, In R. Weed (Ed) *Life Care Planning and Case Management Handbook* 2nd ed, Chapter3, Boca Raton, FL: CRC Press
- Riddick-Grisham, S. (Ed). (2004). *Pediatric life care planning and case management* . Boca Raton, FL: CRC Press
- Riddick-Grisham. S. (2004). The Role of the Life Care Planner in Pediatric Life Care Planning. In S. Riddick-Grisham (Ed) *Pediatric Life Care Planning and Case Management*, Boca Raton, FL: CRC Press
- Neufeld, J.A., Monasterio, E., Livingstone, L. A., Taylor, L. A., Riddick-Grisham, S. & Taylor, R. (2004). Life Care Planning for Children with Neurodevelopmental Disabilities. In S. Riddick-Grisham (Ed) *Pediatric Life Care Planning and Case Management*, Boca Raton, FL: CRC Press
- Riddick-Grisham, S. (2004-2005). Monthly column- Ask A Life Care Planner, In *LNC Resource*: Chesterfield, MO
- Riddick-Grisham, S. (2005). Lifetime Medical Cost Projections: Not a Life Care Plan. *LNC Resource* Vol2 No. 6 : Chesterfield, MO
- Riddick-Grisham, S. (2006). Life Care Planning. *Nursing Malpractice* 3rd Ed. Lawyers and Judges Publishing Company, Inc: Scottsdale, AZ
- Riddick-Grisham. S.(2006) Guest editor: Special Issue on Life Care Planning: *Brain Injury Professional*. North American Brain Injury Society: HDI Publishers: Houston, TX

- Riddick- Grisham, S. & Taylor, R. (2006). Life Care Planning for the Client with a Brain Injury. *Brain Injury Professional*. North American Brain Injury Society: HDI Publishers: Houston, TX
- Riddick-Grisham, S. (2006). 2006 Life Care Planning Summit Proceedings, *Journal of Life Care Planning*, 5(3), 57-89, Athens, GA: Elliott & Fitzpatrick
- Riddick-Grisham, S. (2009). The Role of the Nurse Case Manager in Life Care Planning, In R. Weed & D. Berens (Eds.) *Life Care Planning and Case Management Handbook*, 3rd ed. Boca Raton, FL: CRC Press.
- Field, T.F., Barros-Bailey, M., Riddick-Grisham, S. & Weed, R.O. (2009) Standard of Care: Making Sense of Practice, Ethical, Legal, and Credentialing Guidelines in Forensic Rehabilitation Athens, GA: Elliott & Fitzpatrick
- Riddick-Grisham, S. & Deming, L. (Ed). (2011). *Pediatric life care planning and case management* . Boca Raton, FL: CRC Press
- Neufeld, J.A., Monasterio, E., Taylor, L. A. & Riddick-Grisham, S. (2011). Life Care Planning for Children with Neurodevelopmental Disabilities. In Riddick-Grisham, S. & Deming, L. (Ed). (2011). *Pediatric life care planning and case management* . Boca Raton, FL: CRC Press
- Riddick-Grisham, S. (2011). The Role of the Life Care Planner in Pediatric Life Care Planning. In S. Riddick-Grisham & L. Deming (Ed) *Pediatric Life Care Planning and Case Management*, Boca Raton, FL: CRC Press
- Driscoll, S.W., Quinones-Pagan, V., Savage, R. & Riddick-Grisham, S. (2011). Life Care Planning for the Child with Acquired Brain Injury. In S. Riddick-Grisham & L. Deming (Ed) *Pediatric Life Care Planning and Case Management*, Boca Raton, FL: CRC Press
- Shapiro, S.M.; Deming, L., Riddick-Grisham, S. & Shapiro, R. (2011). Bilirubin encephalopathy/kernicterus implications for life care planning. In S. Riddick-Grisham & L. Deming (Ed) *Pediatric Life Care Planning and Case Management*, Boca Raton, FL: CRC Press
- Riddick-Grisham, Savage, R., Donohoe, P., Life care planning: an indispensable roadmap for families facing a brain injury. *Case In Point*, Vol. 11, No. 3, 22-25.
- Zasler, N.D., Ameis, A., Riddick-Grisham, S., Life Care Planning After Traumatic Brain Injury. *Phys Med Rehabil Clin N Am*. 2013
- Reid, C., Riddick-Grisham, S., The importance of work or productive activity in life care planning and case management, *NeuroRehabilitation*, 36 (3). 2015

Riddick-Grisham, S. (Invited Ed. 6/2015) Life care planning and case management for persons with ABI (Special Issue). *NeuroRehabilitation*, 36 (3).

Riddick-Grisham, S., Grandinette, S., Bonfiglio, R.P. Life care planning for children with acquired brain injuries. *Brain Injury Professional*, North American Brain Injury Society, 13 (4), 14-17 (2017).

Experience:

Present The Care Planner Network

3126 West Cary Street, #137
Richmond, Virginia 23221
1-800-252-1094
www.careplanners.net

The mission of The Care Planner Network is to support, enhance and promote the specialized practice of life care planning. The Care Planner Network is dedicated to improving the reliability and validity of the life care planning process by narrowing the variance in practice patterns, and by providing resources and networking opportunities to all practicing life care planners. Started in 2002 following a request from the field for a centralized meeting site for life care planners.

Present Life Care Manager, LLC

3126 West Cary Street, #137
Richmond, Virginia 23221
1-800-252-1094

Care management of catastrophically injured or chronically ill individuals, life care planning and case management professional education and training, consultation/mentoring of other life care planners, life care planning consultation, patient and family disability education, research and writing.

1991 - 1999 Susan N. Riddick & Associates, Inc.
P.O. Box 271827
Concord, California 94527
(925)-253-8674

Care management of catastrophically injured individuals, life care planning and case management professional education and training, consultation/mentoring of other life care planners, life care planning consultation, patient and family disability education, research and writing.

September, 1994 - Vice President for Network Management Services
March, 1995 Paradigm Health Corporation
4807 Radford Avenue, Suite 108
Richmond, VA 23230-3539
(804) 358-9611

Recruitment, supervision and training of a national network of catastrophic injury medical case managers. Established recruitment orientation and training programs.

October, 1993 - Regional Vice President, Patient Services Division
September, 1994 Paradigm Health Corporation
4807 Radford Avenue, Suite 108
Richmond, VA 23230-3539
(804) 358-9611

Supervision and management of outcome oriented case management in catastrophic injury cases. National work in collaboration with Strategic Partnerships (sales and marketing) to provide training to various insurance companies both on a local and national level.

February, 1984- President, Medical Consultant, RN
November, 1990 Health Information Resources, Inc.
2612 West Cary Street
Richmond, Virginia 23220
(804) 353-3707

Care management of catastrophically injured individuals, life care planning and case management professional education and training, consultation/mentoring of other life care planners, life care planning consultation, patient and family disability education, research and writing.

1982 - 1985 Crawford Health and Rehabilitation Services
Richmond, Virginia
(804) 288-2847

Case management services to disabled individuals, coordination of community and agency resources, medical bill audits, consultation to a

major medical malpractice insurance carrier including review of medical records, physician and treatment team interviews and analysis of the malpractice claims.

Coordination of medical activities in Workers' Compensation and auto accident cases, development of rehabilitation plans and disability costs analysis reports, case management professional education and supervision of nursing and vocational professionals.

1981 – 1982 Riddick Communications Corporation

Production Manager for a video production unit providing education and training tapes to industrial settings. Developed a "Prevention of Back Injury" video for Philip Morris.

1979 – 1981 Occupational Health Nurse Administrator, R.N.
Allied Chemical Corporation
Syracuse, New York

Developed in-house occupational health screening programs, i.e. asbestos and mercury, reported directly to the medical director in providing supervision of staff RNs providing treatment in the emergency care areas and training and program design employee education programs.

1978 – 1979 Independent Occupation Health Consultant, R.N.

Worked with Allied Chemical Corporation establishing their first hearing conservation program.

1977 – 1978 Registered Nurse
Medical Personnel Pool
Syracuse, New York

Worked at a variety of health care settings providing direct patient care.

1976 Charge Nurse, R.N.
New York State Department of Mental Hygiene
Syracuse, New York

Provided nursing care and supervision of personnel in a mental health facility.

Transparency In Life Care Planning

August 29, 2019

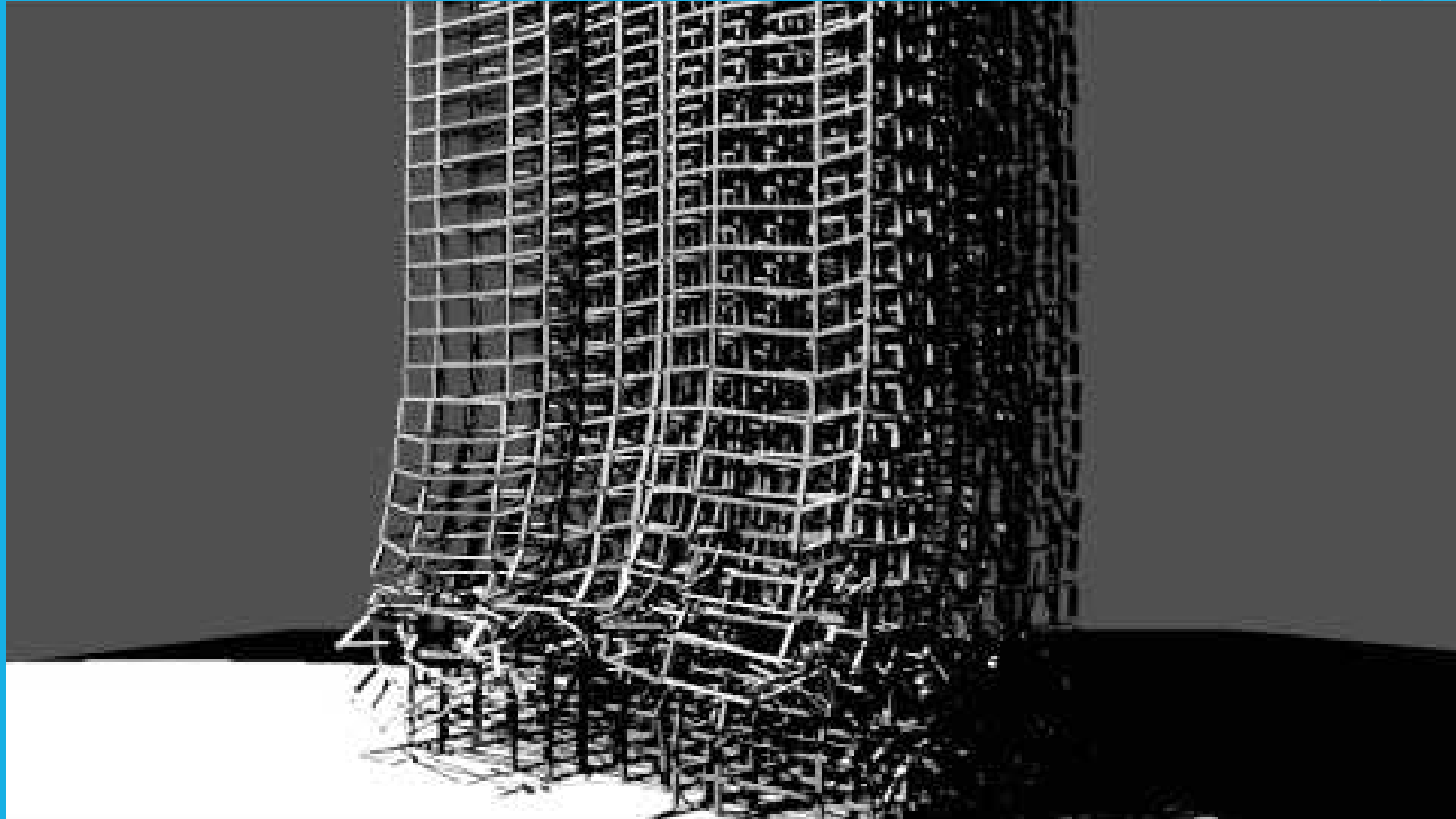
Virginia Beach Bar Association Bench Bar CLE

Susan Riddick-Grisham, RN, BA, CLCP

Life Care Planning is a Transdisciplinary Specialty Practice

The development of a comprehensive plan of care has always been considered an integral part of the medical and rehabilitation process. This type of plan has historically been used by multiple disciplines. Rehabilitation professionals create a rehabilitation plan. Nurses develop a nursing care plan. Physicians define a medical treatment plan, and other professions develop plans specific to his or her practice. (Standards of Practice for Life Care Planners, 3rd Edition, 2015)

Without a solid foundation, you'll have trouble creating anything of value.



The first step in building a strong foundation for the LCP is the education and experience of the Life Care Planner.



Disciplines Entering Into Life Care Planning

- ▶ Nurses
- ▶ MDs, DOs, DCs physicians
- ▶ Occupational therapists
- ▶ Physical therapists
- ▶ Speech-Language therapists
- ▶ Rehabilitation counselors
- ▶ Psychologists/Neuropsychologists
- ▶ Social workers
- ▶ Physician assistants
- ▶ Psychiatrist
- ▶ Rehabilitation case managers

I am an expert Life Care Planner!

Experience, Education, and Training

Functions performed in your day-to-day practice

- Review medical records
- Medical bill reviews
- Pricing medical & therapeutic interventions, equipment and supplies
- Evaluation of individuals with catastrophic injuries or chronic conditions

I am an expert Life Care Planner!

Adherence to Peer Reviewed Standards of Practice

- SOPs authored by IARP/ IALCP
- SOPs authored by Physician Life Care Planners
- SOPs authored by AANCLP
- Practice Standards and Guidelines by ICHCC

I am an expert Life Care Planner!

I follow a consistent, valid methodology

- Collaborate with others with unique expertise, as appropriate (recognize the boundaries of expertise).
- Data collection is systematic, comprehensive, relevant to the situation, and accurate.
- Determination of content and cost research is consistently applied, valid, and reliable.
- Recommendations are based on current standards of care, and informed by clinical practice guidelines.

Review of all of the medical records to understand diagnosis and its implications, pre-morbid conditions, progression of recovery/rehabilitation, compliance with care recommendations, and complications.



Medical bill review to identify cost of care provided in the past and to confirm issues such as medication use versus prescriptions.





Queen v. W.I.C., 2017

MD, CLCP Life Care Planner

- ▶ The court ruled that (the physician) life care planner is qualified to offer an expert opinion as a life care planner. However, the court also found that his methodology and reasoning were based on subjective belief and unsupported speculation. The defendant argued that the life care planner's opinions relied on his own assessment of the evaluatee, rather than one prepared by his treating physicians. The life care planner opined that the evaluatee required numerous medical treatments that were not recommended by any of his treating physicians. In fact, the life care planner never spoke to the evaluatee's treating physicians.

(continued . . .)

Queen v. W.I.C., 2017

[MD, CLCP Life Care Planner]

Regarding reliability, the life care planner failed to conduct any scientific experiments or tests and there is no indication that his methods have been generally accepted in the scientific community.

In addition, he does not indicate that his methodology has been peer-reviewed.

Also, he could not estimate the percentage of the plan that was prepared by his nurse practitioner, who had not been qualified as an expert in this case.

(continued . . .)

Queen v. W.I.C., 2017 [MD, CLCP Life Care Planner]

“Given that [the life care planner’s] opinions on [the evaluatee’s] future medical treatment have no foundation in the record, and his methods prove unreliable, it follows that [the life care planner’s] cost valuation opinion based on those recommended treatments also lacks a proper foundation. Thus, the Court agrees that the proposed treatments and cost estimates in [the life care planner’s] life care plan are not scientifically reliable.”

Review of school records to confirm what is or is not being provided by the school.

Please encourage your Life Care Planner and your Vocational Expert to discuss the case. Why?



Consider Use of Educational Specialist

Works with educators, legal professionals, community service providers, & medical & rehabilitation providers to identify and ensure students receive needed individualized education & transition supports & resources to promote optimal outcomes post-brain injury.

Brenda Eagan-Johnson <https://www.brendaeaganjohnson.com>

Sharon Grandintte <http://www.pinkconcussions.com/sharon-grandinette>







Example: Paralyzed Veterans of America, SCI <https://pva.org/research-resources/publications/clinical-practice-guidelines/>







Other experts need to be informed that there is a Life Care Planner on the case who will be reaching out to them to discuss the LCP.









Any expert who provides input into the LCP needs to see the final LCP well before their deposition or trial appearance.

Nikes v. Abidin, 2017

[CRC Life Care Planner]

- ▶ The life care planner's testimony suggested that she was speculating, or did not have knowledge of actual future need for many of the items, such that there was no reasonable basis for the recommendations. Further, while the life care planner testified that the evaluatee's treating neurologist reviewed and endorsed the life care plan, that neurologist testified that several areas of the plan were uncertain and therefore unsupportable.



Pricing of Goods and Services in LCPs



Let's talk!

Plans are individualized to meet the unique needs of each patient. Needs, rather than funding sources, drive the planning process.



Pricing of Goods and Services in LCPs

- ▶ Medical Bills
- ▶ Vendor/Chargemaster Surveys
- ▶ Internet Search
- ▶ [Inpatient Prospective Payment System rule](#)
- ▶ Under the final rule, hospitals are required to publish a list of their standard charges online in a machine-readable format and to update this information at least annually. Hospitals are currently required to make this information publicly available or available upon request.



DRG NUMBER	DRG DESCRIPTION	AVERAGE CHARGE
MS001	HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM W MCC	\$438,276.00
MS003	ECMO OR TRACH W MV >96 HRS OR PDX EXC FACE, MOUTH & NECK W MAJ O.R.	\$1,034,514.00



APP FINGER SPLINT,STATIC	\$199.00
APP RIGID TOT CONTACT LG	\$623.00
APP SHORT ARM SPLINT,STA	\$199.00
APP SHORT ARM SPLINT,STA	\$199.00
APPL PASTE BOOT	\$356.00
APPL PASTE BOOT	\$356.00
APPLIC COMP WRAP BELOW KNEE	\$356.00
APPLIC COMP WRAP BELOW KNEE	\$356.00

Databases Commonly Used in Life Care Planning

- ▶ *American Hospital Directory*
- ▶ *Context 4 Healthcare*
- ▶ *FAIR Health*
- ▶ *PMIC Medical Fees*
- ▶ *Inhealth Physicians' Fee Reference*
- ▶ *VA Reasonable Data Charges*
- ▶ *Physician Fee and Coding Guide*
- ▶ *Healthcare Cost and Utilization Project (HCUP)*
- ▶ *Virginia Hospital & Healthcare Association-VHHA Price Point*

Example: American Hospital Directory Hip replacement- Norfolk, VA

MedPAR FY	IPPS Cases	ALOS	Average Charges	Average Payment	Average Cost
2018	23	2.0870	\$65,580	\$14,834	\$20,135
2017	34	1.7353	\$59,215	\$16,728	\$18,452
2016	34	1.8824	\$53,828	\$17,076	\$37,269
2015	34	2.2059	\$57,463	\$15,976	\$26,967

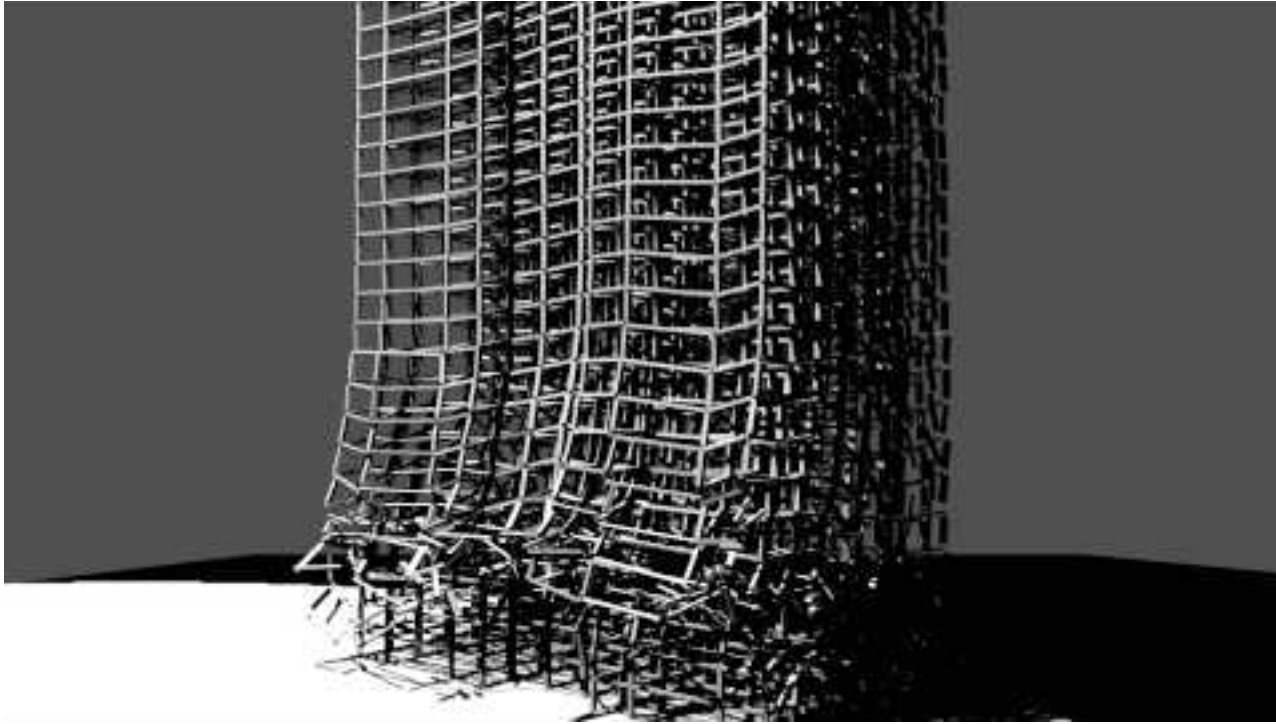


Here's how!

If a future surgery is to be included in the LCP ask the doctor the following questions.

1. Name of the procedure.
2. ICD 10 Diagnosis code.
3. CPT code(s)
4. Where will the surgery be performed***** (this is becoming more and more important)
5. How much OR time will be reserved?
6. Post-op treatment (therapy, home health and so on...)

Creating the proper foundation for the LCP provides for a valid projection of an individual's future needs secondary to an injury.



Tips from the Community of Life Care Planners

- ▶ Please listen to the life care planner's suggestion about other needed evaluations.
- ▶ Avoid trying to save money by not providing all the records.
- ▶ Please do not send 3000 pages on new medical records the day before a deposition.
- ▶ Do not convince me to take a rush assignment by simplifying the facts. I cannot ignore the G-tube or trach supplies, etc. just because you tried to make it sound like a 'quick and dirty' LCP.
- ▶ Do not tell me in April the report is not due until September but neglect to send your retainer until August.
- ▶ Do not forget to tell me when a case has settled as I have been setting aside trial testimony time on my calendar at your request.
- ▶ Take a few minutes to understand the processes and procedures that the life care planner follows in producing their work so that you know what you can expect and when.

Tips from the Community of Life Care Planners

- ▶ “let’s do the depo prep the hour before the depo.” No! let’s do it one week before in case I have to do some more work on the case
- ▶ Similar to this is, “let’s have breakfast prior to your testimony and we can go over it.” Way too late and setting up for a disaster.
- ▶ When possible, use the trial questions created by the life care planner.
- ▶ Keep the life care planner informed to all changes and developments in the case.
- ▶ In a timely manner, inform the life care planner when you will be taking the deposition of the opposing life care planning expert in order to allow for questions to be developed.
- ▶ Don't ask for a "minimum life care plan." There can be different interpretations of the initial document, but it is not the basis for the index document.

**We want to do our best work for each
of you!**
**Thank you for the opportunity to work
on interesting cases!**

**THANK
YOU**

The words "THANK YOU" are rendered in a bold, blue, 3D sans-serif font. The letters are thick and blocky, with a slight shadow cast beneath them on the white surface. The word "THANK" is positioned above "YOU". The background features abstract blue geometric shapes on the right side.

**BUSINESS TAX RETURNS:
WHAT THEY REVEAL AND HOW TO USE THEM
TO VALUE A BUSINESS**

**BY: GARY BAUM, MBA, CPA/ABV
AND ROBERT BURKE, CPA, MSA**

CURRICULUM VITAE

Gary W. Baum, MBA, Certified Public Accountant (Accredited in Business Valuation), Certified Valuation Analyst

Wall, Einhorn & Chernitzer, P.C.
150 West Main Street, Suite 1200
Norfolk, VA 23510
(757) 213-1068 (office)
gbaum@wec-cpa.com

EDUCATION

Certified Valuation Analyst, 2006

Certified Public Accountant, 2005 (Accredited in Business Valuation, 2007)

Masters of Business Administration with Distinction, Johnson Graduate School of Management, Cornell University, New York, 1991 (Concentration in Finance and Accounting)

Attorney's Professional Examination, College of Law, London, England, 1983

Bachelor of Arts, (Law), Oxford University, England, 1982

PROFESSIONAL RESPONSIBILITIES

Mr. Baum has substantial experience in the appraisal of business entities and business interests. Valuation assignments include valuations for estate and gift tax purposes, divorces, minority oppression lawsuits, ESOP compliance appraisals, merger and acquisition appraisals and the valuation of fractional interests in undivided property. He has also determined economic damages in a number of law suits relating (inter alia) to breach of contract, infringement of intellectual property rights and wrongful death. He has performed business appraisals, consulting, or litigation support services in the following industries: food service, manufacturing; real estate management; real estate family limited partnerships; distribution; architecture; construction; wholesale; software; technology; brewing, biotechnology, ship repair and beverage distribution.

TESTIMONY EXPERIENCE

- JTHJR, Inc., v. La Bella Italia Inc., and Anna Alaimo, Virginia Beach Circuit Court (No. CL17-522) – Testified September 6, 2018
- Robert Preston Midgett II v. Nancy O'Brien and Kim Workman, Virginia Beach Circuit Court (No. CL17-4956) – Testified November 20, 2017
- Rogers Electrical of Virginia, LTD vs. Jimmy Sims, et al, Chesapeake Circuit Court (No:CL:14-1917) – Testified April 21, 2016
- Donna Reighard, Inc, v. Ferguson Enterprises, Inc., Newport News Circuit Court (No:CL14-1739) – Deposition February 26, 2016
- Kettler® International, Inc.v. Starbucks Corporation, United States District Court for the Eastern District of Virginia (Civil action no.2:14CV189) – Deposition March 13, 2015

- Nancy C. Jimenez v. Capitol Foundry of Virginia, Inc., Virginia Beach Circuit Court (No:CL13-6364) - Deposition - December 16, 2014; Testified - January 7, 2015
- Carter Machinery Co. v. Martin Constr. Group, LLC, et al., Chesterfield Circuit Court, VA – Testified – August 14 2013
- Kathleen Blough v. Dennis Blough, Virginia Beach Circuit Court (No: CL12-2969), Deposition - May 20 2013;
- Smart Trike USA, LLC et al v. Heinz Kettler GMBH & Co. KG et al, United States District Court for the District of New Jersey (Civil Action No. 10-2063) – Deposition March 2012

PROFESSIONAL EXPERIENCE

Wall Einhorn & Chernitzer, P.C. Norfolk, VA
Valuation Analyst
2005-Present

Huntington Learning Center, Virginia Beach, VA
Owner/Manager
2002-2004

Public Access Technology
Vice President of Business Development
2000-2001

Trader Publishing/Landmark Communications, Norfolk, VA
General Manager of CareerWeb
1998-2000

The SABRE Group, Fort Worth, TX
Product Manager/Alliance Manager
1993-1998

American Airlines, Fort Worth, TX
Financial Analyst
1991-1993

Saunders Sobell/Norton Rose/Boodle Hatfield, London, UK
Corporate Attorney
1983-1989

PROFESSIONAL AFFILIATIONS

Named a Super CPA in Business Valuation/Litigation by Virginia Business Magazine, 2007 – 2013 (survey ceased to be performed after 2013)

Adjunct Instructor, Business Valuation – Old Dominion University Strome College of Business, 2010-2015

National Association of Certified Valuation Analysts

American Institute of Certified Public Accountants

Member, Editorial Board – The Value Examiner

ROBERT BURKE, MSA, CPA

TAX MANAGER AT WALL, EINHORN, & CHERNITZER, P.C.

SUMMARY OF EXPERIENCE

Robert joined the firm in 2013 and provides tax advice and planning for a wide range of entity types in various industries including manufacturing, franchise, government contracting, hospitality, and real estate.

He specializes in tax planning and strategy for high net worth individuals and their closely held businesses. He enjoys consulting on the tax issues related to entity structuring, mergers, acquisitions, and other transactional matters to help clients make the most financially-sound decisions.

EDUCATION

Christopher Newport University

- Bachelor of Science in Business Administration

Old Dominion University

- Master of Science in Accounting

PROFESSIONAL CERTIFICATIONS

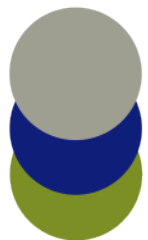
- Certified Public Accountant; Virginia

PROFESSIONAL AFFILIATIONS

- American Institute of Certified Public Accountants
- Virginia Society of Certified Public Accountants (VSCPA)
- Tidewater Chapter of the Virginia Society of Certified Public Accountants
- Virginia Tech Income Tax School – Instructor

COMMUNITY INVOLVEMENT

- Central Business District Association
- VSCPA – Ambassador
- Junior Achievement
- Hampton Roads Innovative Collaborative - Mentor



WALL
EINHORN &
CHERNITZER P.C.

CPAS AND ADVISORS

USING TAX RETURNS FOR BUSINESS VALUATION

Gary W. Baum, MBA, CPA/ABV, CVA

Mr. Baum has substantial experience in the appraisal of business entities and business interests. Valuation assignments include valuations for estate and gift tax purposes, divorces, minority oppression lawsuits, ESOP compliance appraisals, merger and acquisition appraisals and the valuation of fractional interests in undivided property. He has also determined damages in a number of law suits. He has performed business appraisals, consulting, or litigation support services in the following industries: food service, manufacturing; real estate management; real estate family limited partnerships; distribution; architecture; construction; wholesale; software; technology; brewing, biotechnology, ship repair and beverage distribution.

Gary Baum

gbaum@wec-cpa.com

757-213-1068

- Tax Reasons
 - Estate/Gift Tax
 - Income Tax
- Litigation
 - Divorce
 - Shareholder Disputes
 - Quantification of Damages: Value before vs Value after breach/tort
- Buy-Sell Agreements
- Regulations require: ESOP/409(A)

Using Tax Return Information

- The information that Robert has outlined informs the valuation process
- Prefer financial statements audited/reviewed by CPA
- But can use tax returns if necessary
- Look at valuation methods and how to use tax return information to support

- Asset Methods
- Income Methods
- Market Methods

Asset Method

- Subtract liabilities from assets = Net Asset Value (NAV) or Equity Value
- Book value is rarely a good indicator of value
- Adjust all assets and liabilities to fair market value
- May need separate real estate and equipment appraisals
- Note off balance sheet intangible assets

- Most applicable to:
 - Investment or holding companies
 - Very small businesses with little or no goodwill
 - Consistently unprofitable companies
 - Asset-intensive businesses
- Often considered as a “floor value” for other types of companies

- Two Steps
 - Project future cash flows
 - Convert these to a single value using principles based on time value of money concepts

- Capitalized Cash Flow (CCF)
- Assumes history predicts future performance
- Use adjusted historical cash flows (e.g. average or weighted average) – based on tax return information
 - Note not just income from first page of return
- Assumes a single annual cash flow represents cash flows into perpetuity (WOW!!!)

Capitalization of Earnings Example

	2013	2014	2015	2016	2017
Pre Tax Income	50,000	75,000	60,000	20,000	75,000
Add Non Cash Expense	10,000	11,000	12,000	11,000	12,000
Cash Flow	60,000	86,000	72,000	31,000	87,000
Weight	1	1	1	-	2
Weighted Average Cash Flow	78,400				

- Discounted Cash Flow (DCF)
- Assumes future cash flows differ significantly from the past
- Uses projected cash flows
- Can't use tax return

Defining Net Cash Flows

- Income tax return shows most of benefits to an owner of a business
- Cash flows often “normalized” to adjust for non-recurring or non-operating income or expenses
- Often adjustment to income tax numbers reflect owners perks
- Also consider cash vs accrual basis for tax return

- Discount rate - rate of return used to convert a monetary sum to be received in the future into present value
- Build-up method; CAPM

Build Up Method Example

Risk Free Rate (20 year treasury bill)	2.00%
Equity Risk Premium	6.50%
Small Company Risk Premium	4.11%
	12.61%
Company Specific Risk Premium	6%
Discount Rate	18.61%

- Goal is to find multiples of cash flow measures to get value – provided by tax return
 - Revenues
 - EBITDA
- Guideline Company Transaction Method
- Guideline Public Company Method
- Comparability is key factor

Market Method Example

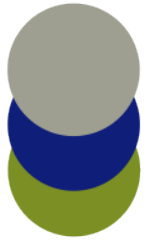
Ongoing future cash flow \$100,000

X

Price/Cash flow multiple 5*

Value: \$500,000

* Derived from transaction data or public company data



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QUESTIONS?

TRUST · TALENT · TEAMWORK

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— CPAs & ADVISORS —

Business Tax Returns

WHAT THEY REVEAL

PRESENTED BY: ROBERT O. BURKE, MSA, CPA

Income Returns

Pass-through Entities (taxed at individual level)

- Form 1065: Partnerships (most common LLC taxed as a partnership)
- Form 1120 S: S Corporations (most common LLC or former C Corp with “S Election”)
 - Schedule K: Various buckets of income, including rental, trade or business, and capital gain/loss

Form 1040: Individual Income Tax Return

- Schedule C: Profit or Loss from Business
- Schedule E: Rental and Royalty Income

Form 1120: C Corporations

Form 1065

U.S. Return of Partnership Income

Page 1: Trade or Business Income Statement

Form 1065 Department of the Treasury Internal Revenue Service		U.S. Return of Partnership Income For calendar year 2018, or tax year beginning _____, 2018, ending _____, 20____. ▶ Go to www.irs.gov/Form1065 for instructions and the latest information.		OMB No. 1545-0123 2018
A Principal business activity	Type or Print	Name of partnership		D Employer identification number
B Principal product or service		Number, street, and room or suite no. If a P.O. box, see instructions.		E Date business started
C Business code number		City or town, state or province, country, and ZIP or foreign postal code		F Total assets (see instructions) \$ _____

- G** Check applicable boxes: (1) Initial return (2) Final return (3) Name change (4) Address change (5) Amended return
- H** Check accounting method: (1) Cash (2) Accrual (3) Other (specify) ▶ _____
- I** Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year. ▶ _____
- J** Check if Schedules C and M-3 are attached.

Caution: Include **only** trade or business income and expenses on lines 1a through 22 below. See instructions for more information.

Income	1a Gross receipts or sales	1a		
	b Returns and allowances	1b		
	c Balance. Subtract line 1b from line 1a			1c
	2 Cost of goods sold (attach Form 1125-A)			2
	3 Gross profit. Subtract line 2 from line 1c			3
	4 Ordinary income (loss) from other partnerships, estates, and trusts (attach statement)			4
	5 Net farm profit (loss) (attach Schedule F (Form 1040))			5
	6 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)			6
7 Other income (loss) (attach statement)			7	
8 Total income (loss). Combine lines 3 through 7			8	
Deductions <small>(see instructions for limitations)</small>	9 Salaries and wages (other than to partners) (less employment credits)			9
	10 Guaranteed payments to partners			10
	11 Repairs and maintenance			11
	12 Bad debts			12
	13 Rent			13
	14 Taxes and licenses			14
	15 Interest (see instructions)			15
	16a Depreciation (if required, attach Form 4562)	16a		
	b Less depreciation reported on Form 1125-A and elsewhere on return	16b		16c
	17 Depletion (Do not deduct oil and gas depletion.)			17
18 Retirement plans, etc.			18	
19 Employee benefit programs			19	
20 Other deductions (attach statement)			20	
21 Total deductions. Add the amounts shown in the far right column for lines 9 through 20			21	
22 Ordinary business income (loss). Subtract line 21 from line 8			22	
Tax and Payment	23 Interest due under the look-back method—completed long-term contracts (attach Form 8697)			23
	24 Interest due under the look-back method—income forecast method (attach Form 8866)			24
	25 BBA AAR imputed underpayment (see instructions)			25
	26 Other taxes (see instructions)			26
	27 Total balance due. Add lines 23 through 27			27
	28 Payment (see instructions)			28
	29 Amount owed. If line 28 is smaller than line 27, enter amount owed			29
	30 Overpayment. If line 28 is larger than line 27, enter overpayment			30

Sign Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than partner or limited liability company member) is based on all information of which preparer has any knowledge.

Form 1065

U.S. Return of Partnership Income

Page 1: Trade or Business Income Statement

- Line 1A: Gross Receipts/Sales
- Line 4: Pass-through Income
- Line 7: Other Income
- Line 10: Guaranteed Payments
- Line 13: Rent Expense
- Line 15: Interest Expense
- Line 16: Depreciation
- Line 20: Other deductions (see statement)

G Check applicable boxes: (1) Initial return (2) Final return (3) Name change (4) Address change (5) Amended return

H Check accounting method: (1) Cash (2) Accrual (3) Other (specify) ▶ _____

I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year. ▶ _____

J Check if Schedules C and M-3 are attached.

Caution: Include **only** trade or business income and expenses on lines 1a through 22 below. See instructions for more information.

Income	1a	Gross receipts or sales	1a			
	b	Returns and allowances	1b			
	c	Balance. Subtract line 1b from line 1a			1c	
	2	Cost of goods sold (attach Form 1125-A)			2	
	3	Gross profit. Subtract line 2 from line 1c			3	
	4	Ordinary income (loss) from other partnerships, estates, and trusts (attach statement)			4	
	5	Net farm profit (loss) (attach Schedule F (Form 1040))			5	
	6	Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)			6	
7	Other income (loss) (attach statement)			7		
8	Total income (loss). Combine lines 3 through 7			8		
Deductions	9	Salaries and wages (other than to partners) (less employment credits)			9	
	10	Guaranteed payments to partners			10	
	11	Repairs and maintenance			11	
	12	Bad debts			12	
	13	Rent			13	
	14	Taxes and licenses			14	
	15	Interest (see instructions)			15	
	16a	Depreciation (if required, attach Form 4562)	16a			
	b	Less depreciation reported on Form 1125-A and elsewhere on return	16b		16c	
	17	Depletion (Do not deduct oil and gas depletion.)			17	
18	Retirement plans, etc.			18		
19	Employee benefit programs			19		
20	Other deductions (attach statement)			20		
21	Total deductions. Add the amounts shown in the far right column for lines 9 through 20			21		
22	Ordinary business income (loss). Subtract line 21 from line 8			22		

Form 1065

U.S. Return of Partnership Income

Page 2: Other Information

- Entity Type
- Clarify ownership
 - Foreign ownership
 - Multi-level ownership
- Foreign accounts

Form 1065 (2018) Page 2

Schedule B Other Information

1 What type of entity is filing this return? Check the applicable box:

a <input type="checkbox"/> Domestic general partnership	b <input type="checkbox"/> Domestic limited partnership	Yes	No
c <input type="checkbox"/> Domestic limited liability company	d <input type="checkbox"/> Domestic limited liability partnership		
e <input type="checkbox"/> Foreign partnership	f <input type="checkbox"/> Other ▶		

2 At the end of the tax year:

a Did any foreign or domestic corporation, partnership (including any entity treated as a partnership), trust, or tax-exempt organization, or any foreign government own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital of the partnership? For rules of constructive ownership, see instructions. If "Yes," attach Schedule B-1, Information on Partners Owning 50% or More of the Partnership

b Did any individual or estate own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital of the partnership? For rules of constructive ownership, see instructions. If "Yes," attach Schedule B-1, Information on Partners Owning 50% or More of the Partnership

3 At the end of the tax year, did the partnership:

a Own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of stock entitled to vote of any foreign or domestic corporation? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (iv) below

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage Owned in Voting Stock

b Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (v) below

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Maximum Percentage Owned in Profit, Loss, or Capital

4 Does the partnership satisfy **all four** of the following conditions?

a The partnership's total receipts for the tax year were less than \$250,000.

b The partnership's total assets at the end of the tax year were less than \$1 million.

c Schedules K-1 are filed with the return and furnished to the partners on or before the due date (including extensions) for the partnership return.

d The partnership is not filing and is not required to file Schedule M-3
If "Yes," the partnership is not required to complete Schedules L, M-1, and M-2; item F on page 1 of Form 1065; or item L on Schedule K-1.

5 Is this partnership a publicly traded partnership, as defined in section 469(k)(2)?

6 During the tax year, did the partnership have any debt that was canceled, was forgiven, or had the terms modified so as to reduce the principal amount of the debt?

7 Has this partnership filed, or is it required to file, Form 8918, Material Advisor Disclosure Statement, to provide information on any reportable transaction?

8 At any time during calendar year 2018, did the partnership have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? See instructions for exceptions and filing requirements for FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR). If "Yes," enter the name of the foreign country. ▶

9 At any time during the tax year, did the partnership receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the partnership may have to file Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. See instructions

10a Is the partnership making, or had it previously made (and not revoked), a section 754 election?
See instructions for details regarding a section 754 election.

b Did the partnership make for this tax year an optional basis adjustment under section 743(b) or 734(b)? If "Yes," attach a statement showing the computation and allocation of the basis adjustment. See instructions

Form 1065 (2018)

Schedule B Other Information (continued)

	Yes	No
c Is the partnership required to adjust the basis of partnership assets under section 743(b) or 734(b) because of a substantial built-in loss (as defined under section 743(d)) or substantial basis reduction (as defined under section 734(d))? If "Yes," attach a statement showing the computation and allocation of the basis adjustment. See instructions		
11 Check this box if, during the current or prior tax year, the partnership distributed any property received in a like-kind exchange or contributed such property to another entity (other than disregarded entities wholly owned by the partnership throughout the tax year) <input type="checkbox"/>		
12 At any time during the tax year, did the partnership distribute to any partner a tenancy-in-common or other undivided interest in partnership property?		
13 If the partnership is required to file Form 8858, Information Return of U.S. Persons With Respect To Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs), enter the number of Forms 8858 attached. See instructions		
14 Does the partnership have any foreign partners? If "Yes," enter the number of Forms 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax, filed for this partnership.		
15 Enter the number of Forms 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, attached to this return.		
16a Did you make any payments in 2018 that would require you to file Form(s) 1099? See instructions		
b If "Yes," did you or will you file required Form(s) 1099?		
17 Enter the number of Form(s) 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations, attached to this return.		
18 Enter the number of partners that are foreign governments under section 892.		
19 During the partnership's tax year, did the partnership make any payments that would require it to file Form 1042 and 1042-S under chapter 3 (sections 1441 through 1464) or chapter 4 (sections 1471 through 1474)?		
20 Was the partnership a specified domestic entity required to file Form 8938 for the tax year? See the Instructions for Form 8938		
21 Is the partnership a section 721(c) partnership, as defined in Treasury Regulations section 1.721(c)-1T(b)(14)?		
22 During the tax year, did the partnership pay or accrue any interest or royalty for which the deduction is not allowed under section 267A? See instructions. If "Yes," enter the total amount of the disallowed deductions. ▶ \$		
23 Did the partnership have an election under section 163(j) for any real property trade or business or any farming business in effect during the tax year? See instructions		
24 Does the partnership satisfy one of the following conditions and the partnership does not own a pass-through entity with current year, or prior year, carryover excess business interest expense? See instructions <ul style="list-style-type: none"> a The partnership's aggregate average annual gross receipts (determined under section 448(c)) for the 3 tax years preceding the current tax year do not exceed \$25 million, and the partnership is not a tax shelter, or b The partnership only has business interest expense from (1) an electing real property trade or business, (2) an electing farming business, or (3) certain utility businesses under section 163(j)(7). If "No," complete and attach Form 8990.		
25 Is the partnership electing out of the centralized partnership audit regime under section 6221(b)? See instructions. If "Yes," the partnership must complete Schedule B-2 (Form 1065). Enter the total from Schedule B-2, Part III, line 3. ▶ If "No," complete Designation of Partnership Representative below.		

Form 1065

U.S. Return of Partnership Income

Page 3: Other Information

- TIC Distributions
- 1099 Issuance
- Foreign control

Form 1065

U.S. Return of Partnership Income

Page 4: Schedule K

- Income "Buckets"
 - Non-cash expenses
- Partner/member generally receives pro-rata share of each line item

Schedule K		Partners' Distributive Share Items		Total amount		
Income (Loss)	1	Ordinary business income (loss) (page 1, line 22)		1		
	2	Net rental real estate income (loss) (attach Form 8825)		2		
	3a	Other gross rental income (loss)	3a			
	b	Expenses from other rental activities (attach statement)	3b			
	c	Other net rental income (loss). Subtract line 3b from line 3a		3c		
	4	Guaranteed payments		4		
	5	Interest income		5		
	6	Dividends and dividend equivalents:		6a		
		a Ordinary dividends				
		b Qualified dividends	6b			
		c Dividend equivalents	6c			
7	Royalties		7			
8	Net short-term capital gain (loss) (attach Schedule D (Form 1065))		8			
9a	Net long-term capital gain (loss) (attach Schedule D (Form 1065))		9a			
b	Collectibles (28%) gain (loss)	9b				
c	Unrecaptured section 1250 gain (attach statement)	9c				
10	Net section 1231 gain (loss) (attach Form 4797)		10			
11	Other income (loss) (see instructions) Type ▶		11			
Deductions	12	Section 179 deduction (attach Form 4562)		12		
	13a	Contributions		13a		
	b	Investment interest expense		13b		
	c	Section 59(e)(2) expenditures: (1) Type ▶ (2) Amount ▶		13c(2)		
d	Other deductions (see instructions) Type ▶		13d			
Self-Employment	14a	Net earnings (loss) from self-employment		14a		
	b	Gross farming or fishing income		14b		
	c	Gross nonfarm income		14c		
Credits	15a	Low-income housing credit (section 42(j)(5))		15a		
	b	Low-income housing credit (other)		15b		
	c	Qualified rehabilitation expenditures (rental real estate) (attach Form 3468, if applicable)		15c		
	d	Other rental real estate credits (see instructions) Type ▶		15d		
	e	Other rental credits (see instructions) Type ▶		15e		
	f	Other credits (see instructions) Type ▶		15f		
Foreign Transactions	16a	Name of country or U.S. possession ▶				
	b	Gross income from all sources		16b		
	c	Gross income sourced at partner level		16c		
		Foreign gross income sourced at partnership level				
	d	Section 951A category ▶	e Foreign branch category ▶	16e		
	f	Passive category ▶	g General category ▶	h Other (attach statement) ▶	16h	
		Deductions allocated and apportioned at partner level				
	i	Interest expense ▶	j Other ▶	16j		
		Deductions allocated and apportioned at partnership level to foreign source income				
	k	Section 951A category ▶	l Foreign branch category ▶	16l		
m	Passive category ▶	n General category ▶	o Other (attach statement) ▶	16o		
p	Total foreign taxes (check one): Paid <input type="checkbox"/> Accrued <input type="checkbox"/>		16p			
q	Reduction in taxes available for credit (attach statement)		16q			
r	Other foreign tax information (attach statement)					
Alternative Minimum Tax (AMT) Items	17a	Post-1986 depreciation adjustment		17a		
	b	Adjusted gain or loss		17b		
	c	Depletion (other than oil and gas)		17c		
	d	Oil, gas, and geothermal properties—gross income		17d		
	e	Oil, gas, and geothermal properties—deductions		17e		
	f	Other AMT items (attach statement)		17f		
Other Information	18a	Tax-exempt interest income		18a		
	b	Other tax-exempt income		18b		
	c	Nondeductible expenses		18c		
	19a	Distributions of cash and marketable securities		19a		
	b	Distributions of other property		19b		
	20a	Investment income		20a		
b	Investment expenses		20b			
c	Other items and amounts (attach statement)					

Form 1065

U.S. Return of Partnership Income

Page 4: Schedule K

- Income “Buckets”
- Line 1: Ordinary Income
- Line 2: Rental income
- Lines 5 – 9: Investment Income
- Line 10: Property Sales
- Line 11: Other Income

Schedule K		Partners' Distributive Share Items		Total amount	
Income (Loss)	1	Ordinary business income (loss) (page 1, line 22)		1	
	2	Net rental real estate income (loss) (attach Form 8825)		2	
	3a	Other gross rental income (loss)	3a		
	b	Expenses from other rental activities (attach statement)	3b		
	c	Other net rental income (loss). Subtract line 3b from line 3a		3c	
	4	Guaranteed payments		4	
	5	Interest income		5	
	6	Dividends and dividend equivalents:		6a	
		a Ordinary dividends			
		b Qualified dividends	6b		
		c Dividend equivalents	6c		
	7 Royalties		7		
	8 Net short-term capital gain (loss) (attach Schedule D (Form 1065))		8		
	9a Net long-term capital gain (loss) (attach Schedule D (Form 1065))		9a		
	b Collectibles (28%) gain (loss)	9b			
	c Unrecaptured section 1250 gain (attach statement)	9c			
	10 Net section 1231 gain (loss) (attach Form 4797)		10		
	11 Other income (loss) (see instructions) Type ▶		11		
Deductions	12	Section 179 deduction (attach Form 4562)		12	
	13a	Contributions		13a	
	b	Investment interest expense		13b	
	c	Section 59(e)(2) expenditures: (1) Type ▶ (2) Amount ▶		13c(2)	
	d Other deductions (see instructions) Type ▶		13d		
Self-Employment	14a	Net earnings (loss) from self-employment		14a	
	b	Gross farming or fishing income		14b	
	c	Gross nonfarm income		14c	

Analysis of Net Income (Loss)

1 Net income (loss). Combine Schedule K, lines 1 through 11. From the result, subtract the sum of Schedule K, lines 12 through 13d, and 16i							1
2 Analysis by partner type:	(i) Corporate	(ii) Individual (active)	(iii) Individual (passive)	(iv) Partnership	(v) Exempt Organization	(vi) Nominee/Other	
a General partners							
b Limited partners							

Schedule L Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1	Cash				
2a	Trade notes and accounts receivable				
b	Less allowance for bad debts				
3	Inventories				
4	U.S. government obligations				
5	Tax-exempt securities				
6	Other current assets (attach statement)				
7a	Loans to partners (or persons related to partners)				
b	Mortgage and real estate loans				
8	Other investments (attach statement)				
9a	Buildings and other depreciable assets				
b	Less accumulated depreciation				
10a	Depletable assets				
b	Less accumulated depletion				
11	Land (net of any amortization)				
12a	Intangible assets (amortizable only)				
b	Less accumulated amortization				
13	Other assets (attach statement)				
14	Total assets				
Liabilities and Capital					
15	Accounts payable				
16	Mortgages, notes, bonds payable in less than 1 year				
17	Other current liabilities (attach statement)				
18	All nonrecourse loans				
19a	Loans from partners (or persons related to partners)				
b	Mortgages, notes, bonds payable in 1 year or more				
20	Other liabilities (attach statement)				
21	Partners' capital accounts				
22	Total liabilities and capital				

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

Note. The partnership may be required to file Schedule M-3 (see instructions).

1	Net income (loss) per books		6	Income recorded on books this year not included on Schedule K, lines 1 through 11 (itemize):	
2	Income included on Schedule K, lines 1, 2, 3c, 5, 6a, 7, 8, 9a, 10, and 11, not recorded on books this year (itemize):		a	Tax-exempt interest \$	
3	Guaranteed payments (other than health insurance)		7	Deductions included on Schedule K, lines 1 through 13d, and 16i, not charged against book income this year (itemize):	
4	Expenses recorded on books this year not included on Schedule K, lines 1 through 13d, and 16i (itemize):		a	Depreciation \$	
a	Depreciation \$		8	Add lines 6 and 7	
b	Travel and entertainment \$		9	Income (loss) (Analysis of Net Income (Loss), line 1). Subtract line 8 from line 5	
5	Add lines 1 through 4				

Schedule M-2 Analysis of Partners' Capital Accounts

1	Balance at beginning of year		6	Distributions: a Cash	
2	Capital contributed: a Cash		b	Property	
	b Property		7	Other decreases (itemize):	
3	Net income (loss) per books		8	Add lines 6 and 7	
4	Other increases (itemize):		9	Balance at end of year. Subtract line 8 from line 5	
5	Add lines 1 through 4				

Form 1065

U.S. Return of Partnership Income

Page 5: Net Income, Schedules L, M-1, and M-2

- Line 1: Net Income (Sum Total)
- Sch. M-1: Book/Tax Differences
- Sch. M-2: Cash and property contributions / distributions

Form 1065

U.S. Return of Partnership Income

Page 5: Schedule L (Balance Sheet)

- Line 1: Cash
- Line 7: Loans to partners
- Line 8: Other Investments
- Line 9: Depreciable Assets
- Line 11: Land
- Liabilities
 - Review statements
 - Request loan documents
 - Note loans from shareholders

Schedule L	Balance Sheets per Books	Beginning of tax year		End of tax year	
		(a)	(b)	(c)	(d)
Assets					
1	Cash				
2a	Trade notes and accounts receivable				
b	Less allowance for bad debts				
3	Inventories				
4	U.S. government obligations				
5	Tax-exempt securities				
6	Other current assets (attach statement)				
7a	Loans to partners (or persons related to partners)				
b	Mortgage and real estate loans				
8	Other investments (attach statement)				
9a	Buildings and other depreciable assets				
b	Less accumulated depreciation				
10a	Depletable assets				
b	Less accumulated depletion				
11	Land (net of any amortization)				
12a	Intangible assets (amortizable only)				
b	Less accumulated amortization				
13	Other assets (attach statement)				
14	Total assets				
Liabilities and Capital					
15	Accounts payable				
16	Mortgages, notes, bonds payable in less than 1 year				
17	Other current liabilities (attach statement)				
18	All nonrecourse loans				
19a	Loans from partners (or persons related to partners)				
b	Mortgages, notes, bonds payable in 1 year or more				
20	Other liabilities (attach statement)				
21	Partners' capital accounts				
22	Total liabilities and capital				

Form 1120-S

U.S. Income Tax Return for an S Corporation

- Similar to Form 1065

Form 1120S		U.S. Income Tax Return for an S Corporation		OMB No. 1545-0123
Department of the Treasury Internal Revenue Service		▶ Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation. ▶ Go to www.irs.gov/Form1120S for instructions and the latest information.		2017
For calendar year 2017 or tax year beginning		, 2017, ending		, 20
A S election effective date	TYPE	Name	D Employer identification number	
B Business activity code number (see instructions)	OR	Number, street, and room or suite no. If a P.O. box, see instructions.	E Date incorporated	
	PRINT	City or town, state or province, country, and ZIP or foreign postal code	F Total assets (see instructions)	
C Check if Sch. M-3 attached <input type="checkbox"/>			\$	
G Is the corporation electing to be an S corporation beginning with this tax year? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," attach Form 2553 if not already filed				
H Check if: (1) <input type="checkbox"/> Final return (2) <input type="checkbox"/> Name change (3) <input type="checkbox"/> Address change (4) <input type="checkbox"/> Amended return (5) <input type="checkbox"/> S election termination or revocation				
I Enter the number of shareholders who were shareholders during any part of the tax year				
Caution: Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.				
Income	1 a Gross receipts or sales	1a		
	b Returns and allowances	1b		
	c Balance. Subtract line 1b from line 1a			1c
	2 Cost of goods sold (attach Form 1125-A)			2
	3 Gross profit. Subtract line 2 from line 1c			3
	4 Net gain (loss) from Form 4797, line 17 (attach Form 4797)			4
5 Other income (loss) (see instructions—attach statement)			5	
6 Total income (loss). Add lines 3 through 5			6	
Deductions (see instructions for limitations)	7 Compensation of officers (see instructions—attach Form 1125-E)			7
	8 Salaries and wages (less employment credits)			8
	9 Repairs and maintenance			9
	10 Bad debts			10
	11 Rents			11
	12 Taxes and licenses			12
	13 Interest			13
	14 Depreciation not claimed on Form 1125-A or elsewhere on return (attach Form 4562)			14
	15 Depletion (Do not deduct oil and gas depletion.)			15
	16 Advertising			16
	17 Pension, profit-sharing, etc., plans			17
	18 Employee benefit programs			18
	19 Other deductions (attach statement)			19
	20 Total deductions. Add lines 7 through 19			20
	21 Ordinary business income (loss). Subtract line 20 from line 6			21
Tax and Payments	22 a Excess net passive income or LIFO recapture tax (see instructions)	22a		
	b Tax from Schedule D (Form 1120S)	22b		
	c Add lines 22a and 22b (see instructions for additional taxes)			22c
	23 a 2017 estimated tax payments and 2016 overpayment credited to 2017	23a		
	b Tax deposited with Form 7004	23b		
	c Credit for federal tax paid on fuels (attach Form 4136)	23c		
	d Add lines 23a through 23c			23d
	24 Estimated tax penalty (see instructions). Check if Form 2220 is attached			24
	25 Amount owed. If line 23d is smaller than the total of lines 22c and 24, enter amount owed			25
	26 Overpayment. If line 23d is larger than the total of lines 22c and 24, enter amount overpaid			26
27 Enter amount from line 26 Credited to 2018 estimated tax ▶ Refunded ▶			27	
Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.				
Sign Here	Signature of officer _____ Date _____ Title _____			May the IRS discuss this return with the preparer shown below (see instructions)? <input type="checkbox"/> Yes <input type="checkbox"/> No
Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed PTIN
	Firm's name ▶	Firm's EIN ▶		
	Firm's address ▶	Phone no.		
For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 11510H Form 1120S (2017)				

Schedule B Other Information (see instructions)

1 Check accounting method: **a** Cash **b** Accrual
c Other (specify) ▶

2 See the instructions and enter the:
a Business activity ▶ **b** Product or service ▶

3 At any time during the tax year, was any shareholder of the corporation a disregarded entity, a trust, an estate, or a nominee or similar person? If "Yes," attach Schedule B-1, Information on Certain Shareholders of an S Corporation . . .

4 At the end of the tax year, did the corporation:
a Own directly 20% or more, or own, directly or indirectly, 50% or more of the total stock issued and outstanding of any foreign or domestic corporation? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (v) below . . .

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage of Stock Owned	(v) If Percentage in (iv) is 100%, Enter the Date (if any) a Qualified Subchapter S Subsidiary Election Was Made

b Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (v) below . . .

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Maximum Percentage Owned in Profit, Loss, or Capital

5 a At the end of the tax year, did the corporation have any outstanding shares of restricted stock?
 If "Yes," complete lines (i) and (ii) below.
(i) Total shares of restricted stock ▶
(ii) Total shares of non-restricted stock ▶

b At the end of the tax year, did the corporation have any outstanding stock options, warrants, or similar instruments?
 If "Yes," complete lines (i) and (ii) below.
(i) Total shares of stock outstanding at the end of the tax year ▶
(ii) Total shares of stock outstanding if all instruments were executed ▶

6 Has this corporation filed, or is it required to file, **Form 8918**, Material Advisor Disclosure Statement, to provide information on any reportable transaction?

7 Check this box if the corporation issued publicly offered debt instruments with original issue discount
 If checked, the corporation may have to file **Form 8281**, Information Return for Publicly Offered Original Issue Discount Instruments.

8 If the corporation: **(a)** was a C corporation before it elected to be an S corporation or the corporation acquired an asset with a basis determined by reference to the basis of the asset (or the basis of any other property) in the hands of a C corporation **and (b)** has net unrealized built-in gain in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years (see instructions) ▶ \$

9 Enter the accumulated earnings and profits of the corporation at the end of the tax year. \$

10 Does the corporation satisfy **both** of the following conditions?
a The corporation's total receipts (see instructions) for the tax year were less than \$250,000
b The corporation's total assets at the end of the tax year were less than \$250,000
 If "Yes," the corporation is not required to complete Schedules L and M-1.

11 During the tax year, did the corporation have any non-shareholder debt that was canceled, was forgiven, or had the terms modified so as to reduce the principal amount of the debt?
 If "Yes," enter the amount of principal reduction \$

12 During the tax year, was a qualified subchapter S subsidiary election terminated or revoked? If "Yes," see instructions

13 a Did the corporation make any payments in 2017 that would require it to file Form(s) 1099?
b If "Yes," did the corporation file or will it file required Forms 1099?

Form 1120-S

U.S. Income Tax Return for an S Corporation

Schedule K Shareholders' Pro Rata Share Items		Total amount
Income (Loss)	1 Ordinary business income (loss) (page 1, line 21)	1
	2 Net rental real estate income (loss) (attach Form 8825)	2
	3a Other gross rental income (loss)	3a
	b Expenses from other rental activities (attach statement)	3b
	c Other net rental income (loss). Subtract line 3b from line 3a	3c
	4 Interest income	4
	5 Dividends: a Ordinary dividends	5a
	b Qualified dividends	5b
	6 Royalties	6
	7 Net short-term capital gain (loss) (attach Schedule D (Form 1120S))	7
Income (Loss)	8a Net long-term capital gain (loss) (attach Schedule D (Form 1120S))	8a
	b Collectibles (28%) gain (loss)	8b
	c Unrecaptured section 1250 gain (attach statement)	8c
	9 Net section 1231 gain (loss) (attach Form 4797)	9
10 Other income (loss) (see instructions) Type ▶	10	
Deductions	11 Section 179 deduction (attach Form 4562)	11
	12a Charitable contributions	12a
	b Investment interest expense	12b
	c Section 59(e)(2) expenditures (1) Type ▶ (2) Amount ▶	12c(2)
d Other deductions (see instructions) Type ▶	12d	
Credits	13a Low-income housing credit (section 42(j)(5))	13a
	b Low-income housing credit (other)	13b
	c Qualified rehabilitation expenditures (rental real estate) (attach Form 3468, if applicable)	13c
	d Other rental real estate credits (see instructions) Type ▶	13d
	e Other rental credits (see instructions) Type ▶	13e
	f Biofuel producer credit (attach Form 6478)	13f
	g Other credits (see instructions) Type ▶	13g
Foreign Transactions	14a Name of country or U.S. possession ▶	
	b Gross income from all sources	14b
	c Gross income sourced at shareholder level Foreign gross income sourced at corporate level	14c
	d Passive category	14d
	e General category	14e
	f Other (attach statement) Deductions allocated and apportioned at shareholder level	14f
	g Interest expense	14g
	h Other Deductions allocated and apportioned at corporate level to foreign source income	14h
	i Passive category	14i
	j General category	14j
	k Other (attach statement) Other information	14k
	l Total foreign taxes (check one): <input type="checkbox"/> Paid <input type="checkbox"/> Accrued	14l
	m Reduction in taxes available for credit (attach statement)	14m
	n Other foreign tax information (attach statement)	
Alternative Minimum Tax (AMT) Items	15a Post-1986 depreciation adjustment	15a
	b Adjusted gain or loss	15b
	c Depletion (other than oil and gas)	15c
	d Oil, gas, and geothermal properties—gross income	15d
	e Oil, gas, and geothermal properties—deductions	15e
	f Other AMT items (attach statement)	15f
Items Affecting Shareholder Basis	16a Tax-exempt interest income	16a
	b Other tax-exempt income	16b
	c Nondeductible expenses	16c
	d Distributions (attach statement if required) (see instructions)	16d
	e Repayment of loans from shareholders	16e

Form 1120-S

U.S. Income Tax Return for an S Corporation

Form 1120-S

U.S. Income Tax Return for an S Corporation

Schedule K		Shareholders' Pro Rata Share Items (continued)	Total amount	
Other Information	17a	Investment income	17a	
	b	Investment expenses	17b	
	c	Dividend distributions paid from accumulated earnings and profits	17c	
	d	Other items and amounts (attach statement)		
Reconciliation	18	Income/loss reconciliation. Combine the amounts on lines 1 through 10 in the far right column. From the result, subtract the sum of the amounts on lines 11 through 12d and 14l	18	

Schedule L		Balance Sheets per Books		Beginning of tax year		End of tax year	
		(a)	(b)	(c)	(d)		
Assets							
1	Cash						
2a	Trade notes and accounts receivable						
b	Less allowance for bad debts	()		()			
3	Inventories						
4	U.S. government obligations						
5	Tax-exempt securities (see instructions)						
6	Other current assets (attach statement)						
7	Loans to shareholders						
8	Mortgage and real estate loans						
9	Other investments (attach statement)						
10a	Buildings and other depreciable assets						
b	Less accumulated depreciation	()		()			
11a	Depletable assets						
b	Less accumulated depletion	()		()			
12	Land (net of any amortization)						
13a	Intangible assets (amortizable only)						
b	Less accumulated amortization	()		()			
14	Other assets (attach statement)						
15	Total assets						
Liabilities and Shareholders' Equity							
16	Accounts payable						
17	Mortgages, notes, bonds payable in less than 1 year						
18	Other current liabilities (attach statement)						
19	Loans from shareholders						
20	Mortgages, notes, bonds payable in 1 year or more						
21	Other liabilities (attach statement)						
22	Capital stock						
23	Additional paid-in capital						
24	Retained earnings						
25	Adjustments to shareholders' equity (attach statement)						
26	Less cost of treasury stock	()		()			
27	Total liabilities and shareholders' equity						

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

Note: The corporation may be required to file Schedule M-3 (see instructions)

1 Net income (loss) per books		5 Income recorded on books this year not included on Schedule K, lines 1 through 10 (itemize):
2 Income included on Schedule K, lines 1, 2, 3c, 4, 5a, 6, 7, 8a, 9, and 10, not recorded on books this year (itemize)		a Tax-exempt interest \$
3 Expenses recorded on books this year not included on Schedule K, lines 1 through 12 and 14l (itemize):		6 Deductions included on Schedule K, lines 1 through 12 and 14l, not charged against book income this year (itemize):
a Depreciation \$		a Depreciation \$
b Travel and entertainment \$		7 Add lines 5 and 6
4 Add lines 1 through 3		8 Income (loss) (Schedule K, line 18). Line 4 less line 7

Schedule M-2 Analysis of Accumulated Adjustments Account, Other Adjustments Account, and Shareholders' Undistributed Taxable Income Previously Taxed (see instructions)

	(a) Accumulated adjustments account	(b) Other adjustments account	(c) Shareholders' undistributed taxable income previously taxed
1 Balance at beginning of tax year			
2 Ordinary income from page 1, line 21			
3 Other additions			
4 Loss from page 1, line 21	()		
5 Other reductions	()	()	
6 Combine lines 1 through 5			
7 Distributions other than dividend distributions			
8 Balance at end of tax year. Subtract line 7 from line 6			

Form 1120-S

U.S. Income Tax Return for an S Corporation

Form 8825

Rental Real Estate Income and Expenses of a Partnership or S Corporation

- Line 1: Note Properties Listed

Form 8825 (Rev. September 2017) Department of the Treasury Internal Revenue Service		Rental Real Estate Income and Expenses of a Partnership or an S Corporation				OMB No. 1545-0123
Name _____					Employer identification number _____	
1	Show the type and address of each property. For each rental real estate property listed, report the number of days rented at fair rental value and days with personal use. See instructions. See page 2 to list additional properties.					
	Physical address of each property—street, city, state, ZIP code	Type—Enter code 1–8; see page 2 for list	Fair Rental Days	Personal Use Days		
A	_____					
B	_____					
C	_____					
D	_____					
		Properties				
		A	B	C	D	
2	Gross rents	2				
Rental Real Estate Expenses						
3	Advertising	3				
4	Auto and travel	4				
5	Cleaning and maintenance	5				
6	Commissions	6				
7	Insurance	7				
8	Legal and other professional fees	8				
9	Interest	9				
10	Repairs	10				
11	Taxes	11				
12	Utilities	12				
13	Wages and salaries	13				
14	Depreciation (see instructions)	14				
15	Other (list) ▶ _____	15				
16	Total expenses for each property. Add lines 3 through 15	16				
17	Income or (loss) from each property. Subtract line 16 from line 2	17				
18a	Total gross rents. Add gross rents from line 2, columns A through H	18a				
18b	Total expenses. Add total expenses from line 16, columns A through H	18b				
19	Net gain (loss) from Form 4797, Part II, line 17, from the disposition of property from rental real estate activities	19				
20a	Net income (loss) from rental real estate activities from partnerships, estates, and trusts in which this partnership or S corporation is a partner or beneficiary (from Schedule K-1)	20a				
20b	Identify below the partnerships, estates, or trusts from which net income (loss) is shown on line 20a. Attach a schedule if more space is needed.					
	(1) Name _____ (2) Employer identification number _____					
21	Net rental estate income (loss). Combine lines 18a through 20a. Enter the result here and on: • Form 1065 or 1120S: Schedule K, line 2; or • Form 1065-B: Part I, line 4	21				

Form 8825

Rental Real Estate Income and Expenses of a Partnership or S Corporation

- Line 2: Gross Rents
- Line 4: Auto and travel
- Line 13: Wages and salaries
- Line 14: Depreciation (non-cash)
- Line 15: Other (see statement)
 - Understand expenses
 - Look for personal expenses
- Line 20: Pass-through real estate income
 - Note multi-level ownership

		Properties			
		A	B	C	D
Rental Real Estate Income					
2 Gross rents	2				
Rental Real Estate Expenses					
3 Advertising	3				
4 Auto and travel	4				
5 Cleaning and maintenance . .	5				
6 Commissions	6				
7 Insurance	7				
8 Legal and other professional fees	8				
9 Interest	9				
10 Repairs	10				
11 Taxes	11				
12 Utilities	12				
13 Wages and salaries	13				
14 Depreciation (see instructions)	14				
15 Other (list) ▶	15				
16 Total expenses for each property. Add lines 3 through 15	16				
17 Income or (loss) from each property. Subtract line 16 from line 2	17				
18a Total gross rents. Add gross rents from line 2, columns A through H	18a				
b Total expenses. Add total expenses from line 16, columns A through H	18b				
19 Net gain (loss) from Form 4797, Part II, line 17, from the disposition of property from rental real estate activities	19				
20a Net income (loss) from rental real estate activities from partnerships, estates, and trusts in which this partnership or S corporation is a partner or beneficiary (from Schedule K-1)	20a				
b Identify below the partnerships, estates, or trusts from which net income (loss) is shown on line 20a. Attach a schedule if more space is needed.					
(1) Name					
(2) Employer identification number					

Form 1040

U.S. Individual Income Tax Return

1040 Department of the Treasury—Internal Revenue Service (99) **2018** OMB No. 1545-0074 IRS Use Only—Do not write or staple in this space.

Filing status: Single Married filing jointly Married filing separately Head of household Qualifying widow(er)

Your first name and Initial Last name Your social security number

Your standard deduction: Someone can claim you as a dependent You were born before January 2, 1954 You are blind

If joint return, spouse's first name and Initial Last name Spouse's social security number

Spouse standard deduction: Someone can claim your spouse as a dependent Spouse was born before January 2, 1954 Full-year health care coverage or exempt (see Inst.)

Spouse is blind Spouse itemizes on a separate return or you were dual-status alien

Home address (number and street). If you have a P.O. box, see instructions. Apt. no. Presidential Election Campaign (see Inst.) You Spouse

City, town or post office, state, and ZIP code. If you have a foreign address, attach Schedule 6. If more than four dependents, see Inst. and ✓ here ▶

Dependents (see instructions):		(2) Social security number	(3) Relationship to you	(4) ✓ If qualifies for (see Inst.):	
(1) First name	Last name			Child tax credit	Credit for other dependents
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>

Sign Here Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Joint return? See instructions. Keep a copy for your records. ▶

Your signature	Date	Your occupation	If the IRS sent you an Identity Protection PIN, enter it here (see Inst.)
Spouse's signature. If a joint return, both must sign.	Date	Spouse's occupation	If the IRS sent you an Identity Protection PIN, enter it here (see Inst.)

Paid Preparer Use Only

Preparer's name	Preparer's signature	PTIN	Firm's EIN	Check it: <input type="checkbox"/> 3rd Party Designee <input type="checkbox"/> Self-employed
Firm's name ▶		Phone no.		
Firm's address ▶				

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 1132081 Form **1040** (2018)

Form 1040

U.S. Individual Income Tax Return

	1	Wages, salaries, tips, etc. Attach Form(s) W-2				1		
Attach Form(s) W-2. Also attach Form(s) W-2G and 1099-R if tax was withheld.	2a	Tax-exempt interest	2a			2b	Taxable interest	
	3a	Qualified dividends	3a			3b	Ordinary dividends	
	4a	IRAs, pensions, and annuities	4a			4b	Taxable amount	
	5a	Social security benefits	5a			5b	Taxable amount	
	6	Total income. Add lines 1 through 5. Add any amount from Schedule 1, line 22					6	
	7	Adjusted gross income. If you have no adjustments to income, enter the amount from line 6; otherwise, subtract Schedule 1, line 36, from line 6					7	
Standard Deduction for— <ul style="list-style-type: none"> • Single or married filing separately, \$12,000 • Married filing jointly or Qualifying widow(er), \$24,000 • Head of household, \$18,000 • If you checked any box under Standard deduction, see instructions. 	8	Standard deduction or itemized deductions (from Schedule A)					8	
	9	Qualified business income deduction (see instructions)					9	
	10	Taxable income. Subtract lines 8 and 9 from line 7. If zero or less, enter -0-					10	
	11	a Tax (see inst.) (check if any from: 1 <input type="checkbox"/> Form(s) 8814 2 <input type="checkbox"/> Form 4972 3 <input type="checkbox"/>) b Add any amount from Schedule 2 and check here <input type="checkbox"/>					11	
	12	a Child tax credit/credit for other dependents b Add any amount from Schedule 3 and check here <input type="checkbox"/>					12	
	13	Subtract line 12 from line 11. If zero or less, enter -0-					13	
	14	Other taxes. Attach Schedule 4					14	
	15	Total tax. Add lines 13 and 14					15	
	16	Federal income tax withheld from Forms W-2 and 1099					16	
	17	Refundable credits: a EIC (see inst.) b Sch. 8812 c Form 8863 Add any amount from Schedule 5					17	
	18	Add lines 16 and 17. These are your total payments					18	
Direct deposit? See instructions.	Refund						19	
	19	If line 18 is more than line 15, subtract line 15 from line 18. This is the amount you overpaid					19	
	20a	Amount of line 19 you want refunded to you. If Form 8868 is attached, check here <input type="checkbox"/>					20a	
	b	Routing number	c Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings			d	Account number	
	21	Amount of line 19 you want applied to your 2019 estimated tax					21	
Amount You Owe	22	Amount you owe. Subtract line 18 from line 15. For details on how to pay, see instructions					22	
	23	Estimated tax penalty (see instructions)					23	

Go to www.irs.gov/Form1040 for instructions and the latest information.

SCHEDULE 1
(Form 1040)

Department of the Treasury
Internal Revenue Service

Additional Income and Adjustments to Income

► Attach to Form 1040.
► Go to www.irs.gov/Form1040 for instructions and the latest information.

OMB No. 1545-0074

2018
Attachment
Sequence No. **01**

Name(s) shown on Form 1040

Your social security number

Additional Income	1-9b	Reserved	1-9b		
	10	Taxable refunds, credits, or offsets of state and local income taxes	10		
	11	Alimony received	11		
	12	Business income or (loss). Attach Schedule C or C-EZ	12		
	13	Capital gain or (loss). Attach Schedule D if required. If not required, check here ► <input type="checkbox"/>	13		
	14	Other gains or (losses). Attach Form 4797	14		
	15a	Reserved	15b		
	16a	Reserved	16b		
	17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17		
	18	Farm income or (loss). Attach Schedule F	18		
	19	Unemployment compensation	19		
	20a	Reserved	20b		
	21	Other income. List type and amount ►	21		
	22	Combine the amounts in the far right column. If you don't have any adjustments to income, enter here and include on Form 1040, line 6. Otherwise, go to line 23	22		
Adjustments to Income	23	Educator expenses	23		
	24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106	24		
	25	Health savings account deduction. Attach Form 8889	25		
	26	Moving expenses for members of the Armed Forces. Attach Form 3903	26		
	27	Deductible part of self-employment tax. Attach Schedule SE	27		
	28	Self-employed SEP, SIMPLE, and qualified plans	28		
	29	Self-employed health insurance deduction	29		
	30	Penalty on early withdrawal of savings	30		
	31a	Alimony paid b Recipient's SSN ►	31a		
	32	IRA deduction	32		
	33	Student loan interest deduction	33		
	34	Reserved	34		
	35	Reserved	35		
	36	Add lines 23 through 35	36		

For Paperwork Reduction Act Notice, see your tax return instructions.

Cat. No. 71479F

Schedule 1 (Form 1040) 2018

Form 1040: Schedule 1

U.S. Individual Income Tax Return

- Line 12: Business Income (Schedule C)
- Line 17: Rental Income (Schedule E)
- Line 21: Other Income

Form 1040: Schedule C

Profit or Loss from Business

SCHEDULE C (Form 1040)		Profit or Loss From Business (Sole Proprietorship)		OMB No. 1545-0074 2018 Attachment Sequence No. 09
Department of the Treasury Internal Revenue Service (99)		▶ Go to www.irs.gov/ScheduleC for instructions and the latest information. ▶ Attach to Form 1040, 1040NR, or 1041; partnerships generally must file Form 1065.		
Name of proprietor		Social security number (SSN)		
A Principal business or profession, including product or service (see instructions)		B Enter code from instructions		
C Business name. If no separate business name, leave blank.		D Employer ID number (EIN) (see instr.)		
E Business address (including suite or room no.) ▶ City, town or post office, state, and ZIP code				
F Accounting method: (1) <input type="checkbox"/> Cash (2) <input type="checkbox"/> Accrual (3) <input type="checkbox"/> Other (specify) ▶				
G Did you "materially participate" in the operation of this business during 2018? If "No," see instructions for limit on losses		<input type="checkbox"/> Yes <input type="checkbox"/> No		
H If you started or acquired this business during 2018, check here		<input type="checkbox"/>		
I Did you make any payments in 2018 that would require you to file Form(s) 1099? (see instructions)		<input type="checkbox"/> Yes <input type="checkbox"/> No		
J If "Yes," did you or will you file required Forms 1099?		<input type="checkbox"/> Yes <input type="checkbox"/> No		
Part I Income				
1	Gross receipts or sales. See instructions for line 1 and check the box if this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked. ▶ <input type="checkbox"/>		1	
2	Returns and allowances		2	
3	Subtract line 2 from line 1		3	
4	Cost of goods sold (from line 42)		4	
5	Gross profit. Subtract line 4 from line 3		5	
6	Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)		6	
7	Gross income. Add lines 5 and 6		7	
Part II Expenses. Enter expenses for business use of your home only on line 30.				
8	Advertising	8	18	Office expense (see instructions)
9	Car and truck expenses (see instructions)	9	19	Pension and profit-sharing plans
10	Commissions and fees	10	20	Rent or lease (see instructions):
11	Contract labor (see instructions)	11	20a	a Vehicles, machinery, and equipment
12	Depletion	12	20b	b Other business property
13	Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13	21	Repairs and maintenance
14	Employee benefit programs (other than on line 19)	14	22	Supplies (not included in Part III)
15	Insurance (other than health)	15	23	Taxes and licenses
16	Interest (see instructions):		24	Travel and meals:
16a	a Mortgage (paid to banks, etc.)	16a	24a	a Travel
16b	b Other	16b	24b	b Deductible meals (see instructions)
17	Legal and professional services	17	25	Utilities
			26	Wages (less employment credits)
			27a	Other expenses (from line 48)
			27b	b Reserved for future use
28	Total expenses before expenses for business use of home. Add lines 8 through 27a		28	
29	Tentative profit or (loss). Subtract line 28 from line 7		29	
30	Expenses for business use of your home. Do not report these expenses elsewhere. Attach Form 8829 unless using the simplified method (see instructions). Simplified method filers only: enter the total square footage of: (a) your home: _____ and (b) the part of your home used for business: _____. Use the Simplified Method Worksheet in the instructions to figure the amount to enter on line 30		30	
31	Net profit or (loss). Subtract line 30 from line 29. • If a profit, enter on both Schedule 1 (Form 1040), line 12 (or Form 1040NR, line 13) and on Schedule SE, line 2 . (If you checked the box on line 1, see instructions). Estates and trusts, enter on Form 1041, line 3 . • If a loss, you must go to line 32.		31	
32	If you have a loss, check the box that describes your investment in this activity (see instructions). • If you checked 32a, enter the loss on both Schedule 1 (Form 1040), line 12 (or Form 1040NR, line 13) and on Schedule SE, line 2 . (If you checked the box on line 1, see the line 31 instructions). Estates and trusts, enter on Form 1041, line 3 . • If you checked 32b, you must attach Form 6198 . Your loss may be limited.			
			32a	<input type="checkbox"/> All investment is at risk.
			32b	<input type="checkbox"/> Some investment is not at risk.

Form 1040: Schedule C

Profit or Loss from Business

Key: *Understand the expenses*

- Line 1: Gross receipts/sales
- Line 9: Car and truck expenses
- Line 22: Supplies
- 24a/b: Travel, M&E
- 27a: Other expenses (see statements)

Part I Income									
1	Gross receipts or sales. See instructions for line 1 and check the box if this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked <input type="checkbox"/>	1							
2	Returns and allowances	2							
3	Subtract line 2 from line 1	3							
4	Cost of goods sold (from line 42)	4							
5	Gross profit. Subtract line 4 from line 3	5							
6	Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)	6							
7	Gross income. Add lines 5 and 6	7							
Part II Expenses. Enter expenses for business use of your home only on line 30.									
8	Advertising	8			18	Office expense (see instructions)	18		
9	Car and truck expenses (see instructions)	9			19	Pension and profit-sharing plans	19		
10	Commissions and fees	10			20	Rent or lease (see instructions):			
11	Contract labor (see instructions)	11			a	Vehicles, machinery, and equipment	20a		
12	Depletion	12			b	Other business property	20b		
13	Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13			21	Repairs and maintenance	21		
14	Employee benefit programs (other than on line 19)	14			22	Supplies (not included in Part III)	22		
15	Insurance (other than health)	15			23	Taxes and licenses	23		
16	Interest:				24	Travel, meals, and entertainment:			
a	Mortgage (paid to banks, etc.)	16a			a	Travel	24a		
b	Other	16b			b	Deductible meals and entertainment (see instructions)	24b		
17	Legal and professional services	17			25	Utilities	25		
					26	Wages (less employment credits)	26		
					27a	Other expenses (from line 48)	27a		
					b	Reserved for future use	27b		
28	Total expenses before expenses for business use of home. Add lines 8 through 27a	28							
29	Tentative profit or (loss). Subtract line 28 from line 7	29							
30	Expenses for business use of your home. Do not report these expenses elsewhere. Attach Form 8829 unless using the simplified method (see instructions). Simplified method filers only: enter the total square footage of: (a) your home: _____ and (b) the part of your home used for business: _____. Use the Simplified Method Worksheet in the instructions to figure the amount to enter on line 30	30							
31	Net profit or (loss). Subtract line 30 from line 29. • If a profit, enter on both Form 1040, line 12 (or Form 1040NR, line 13) and on Schedule SE, line 2 . (If you checked the box on line 1, see instructions). Estates and trusts, enter on Form 1041, line 3 .	31							

Form 1040: Schedule E

Supplemental Income and Loss
(Page 1: Rental Income)

SCHEDULE E (Form 1040)		Supplemental Income and Loss (From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)		OMB No. 1545-0074	
Department of the Treasury Internal Revenue Service (99)		▶ Attach to Form 1040, 1040NR, or Form 1041. ▶ Go to www.irs.gov/ScheduleE for instructions and the latest information.		2018 Attachment Sequence No. 13	
Name(s) shown on return				Your social security number	
Part I Income or Loss From Rental Real Estate and Royalties Note: If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.					
A Did you make any payments in 2018 that would require you to file Form(s) 1099? (see instructions)				<input type="checkbox"/> Yes <input type="checkbox"/> No	
B If "Yes," did you or will you file required Forms 1099?				<input type="checkbox"/> Yes <input type="checkbox"/> No	
1a Physical address of each property (street, city, state, ZIP code)					
A					
B					
C					
1b	Type of Property (from list below)	2 For each rental real estate property listed above, report the number of fair rental and personal use days. Check the QJV box only if you meet the requirements to file as a qualified joint venture. See instructions.	Fair Rental Days	Personal Use Days	QJV
A			A		<input type="checkbox"/>
B			B		<input type="checkbox"/>
C			C		<input type="checkbox"/>
Type of Property:					
1 Single Family Residence		3 Vacation/Short-Term Rental	5 Land	7 Self-Rental	
2 Multi-Family Residence		4 Commercial	6 Royalties	8 Other (describe)	
Income:			A	B	C
3	Rents received	3			
4	Royalties received	4			
Expenses:					
5	Advertising	5			
6	Auto and travel (see instructions)	6			
7	Cleaning and maintenance	7			
8	Commissions	8			
9	Insurance	9			
10	Legal and other professional fees	10			
11	Management fees	11			
12	Mortgage interest paid to banks, etc. (see instructions)	12			
13	Other interest	13			
14	Repairs	14			
15	Supplies	15			
16	Taxes	16			
17	Utilities	17			
18	Depreciation expense or depletion	18			
19	Other (list) ▶	19			
20	Total expenses. Add lines 5 through 19	20			
21	Subtract line 20 from line 3 (rents) and/or 4 (royalties). If result is a (loss), see instructions to find out if you must file Form 6198	21			
22	Deductible rental real estate loss after limitation, if any, on Form 8582 (see instructions)	22	()	()	()
23a	Total of all amounts reported on line 3 for all rental properties	23a			
b	Total of all amounts reported on line 4 for all royalty properties	23b			
c	Total of all amounts reported on line 12 for all properties	23c			
d	Total of all amounts reported on line 18 for all properties	23d			
e	Total of all amounts reported on line 20 for all properties	23e			
24	Income. Add positive amounts shown on line 21. Do not include any losses	24			
25	Losses. Add royalty losses from line 21 and rental real estate losses from line 22. Enter total losses here	25	()		
26	Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Schedule 1 (Form 1040), line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2.	26			

Form 1040: Schedule E

Supplemental Income and Loss
(Page 1: Rental Income)

- Line 3: Rents received
- Line 6: Auto and travel
- Line 15: Supplies
- Line 19: Other Expenses (see statements)

Income:		Properties:	A	B	C
3	Rents received	3			
4	Royalties received	4			
Expenses:					
5	Advertising	5			
6	Auto and travel (see instructions)	6			
7	Cleaning and maintenance	7			
8	Commissions.	8			
9	Insurance	9			
10	Legal and other professional fees	10			
11	Management fees	11			
12	Mortgage interest paid to banks, etc. (see instructions)	12			
13	Other interest.	13			
14	Repairs.	14			
15	Supplies	15			
16	Taxes	16			
17	Utilities	17			
18	Depreciation expense or depletion	18			
19	Other (list) ▶	19			
20	Total expenses. Add lines 5 through 19	20			
21	Subtract line 20 from line 3 (rents) and/or 4 (royalties). If result is a (loss), see instructions to find out if you must file Form 6198	21			
22	Deductible rental real estate loss after limitation, if any, on Form 8582 (see instructions)	22	()	()	()

Name(s) shown on return. Do not enter name and social security number if shown on other side.

Your social security number

Caution: The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations - Note: If you report a loss, receive a distribution, dispose of stock, or receive a loan repayment from an S corporation, you must check the box in column (e) on line 28 and attach the required basis computation. If you report a loss from an at-risk activity for which any amount is not at risk, you must check the box in column (f) on line 28 and attach Form 6196 (see instructions).

27 Are you reporting any loss not allowed in a prior year due to the at-risk, excess farm loss, or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? If you answered "Yes," see instructions before completing this section. Yes No

Table with 6 columns: (a) Name, (b) Enter P for partnership; S for S corporation, (c) Check if foreign partnership, (d) Employer identification number, (e) Check if basis computation is required, (f) Check if any amount is not at risk. Rows A, B, C, D.

Table with 5 columns: (g) Passive loss allowed (attach Form 8582 if required), (h) Passive income from Schedule K-1, (i) Nonpassive loss from Schedule K-1, (j) Section 179 expense deduction from Form 4562, (k) Nonpassive income from Schedule K-1. Rows A, B, C, D, 29a Totals, 29b Totals, 30, 31, 32.

Part III Income or Loss From Estates and Trusts. Table with 2 columns: (a) Name, (b) Employer identification number. Rows A, B.

Table with 4 columns: (c) Passive deduction or loss allowed (attach Form 8582 if required), (d) Passive income from Schedule K-1, (e) Deduction or loss from Schedule K-1, (f) Other income from Schedule K-1. Rows A, B, 34a Totals, 34b Totals, 35, 36, 37.

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) - Residual Holder. Table with 5 columns: (a) Name, (b) Employer identification number, (c) Excess inclusion from Schedules Q, line 2c (see instructions), (d) Taxable income (net loss) from Schedules Q, line 1b, (e) Income from Schedules Q, line 3b. Row 39.

Part V Summary. Table with 2 columns: Description, Amount. Rows 40, 41, 42, 43.

Form 1040: Schedule E

Supplemental Income and Loss
(Page 2: Pass-through Income)

Form 1040: Schedule E

Supplemental Income and Loss
(Page 2: Pass-through Income)

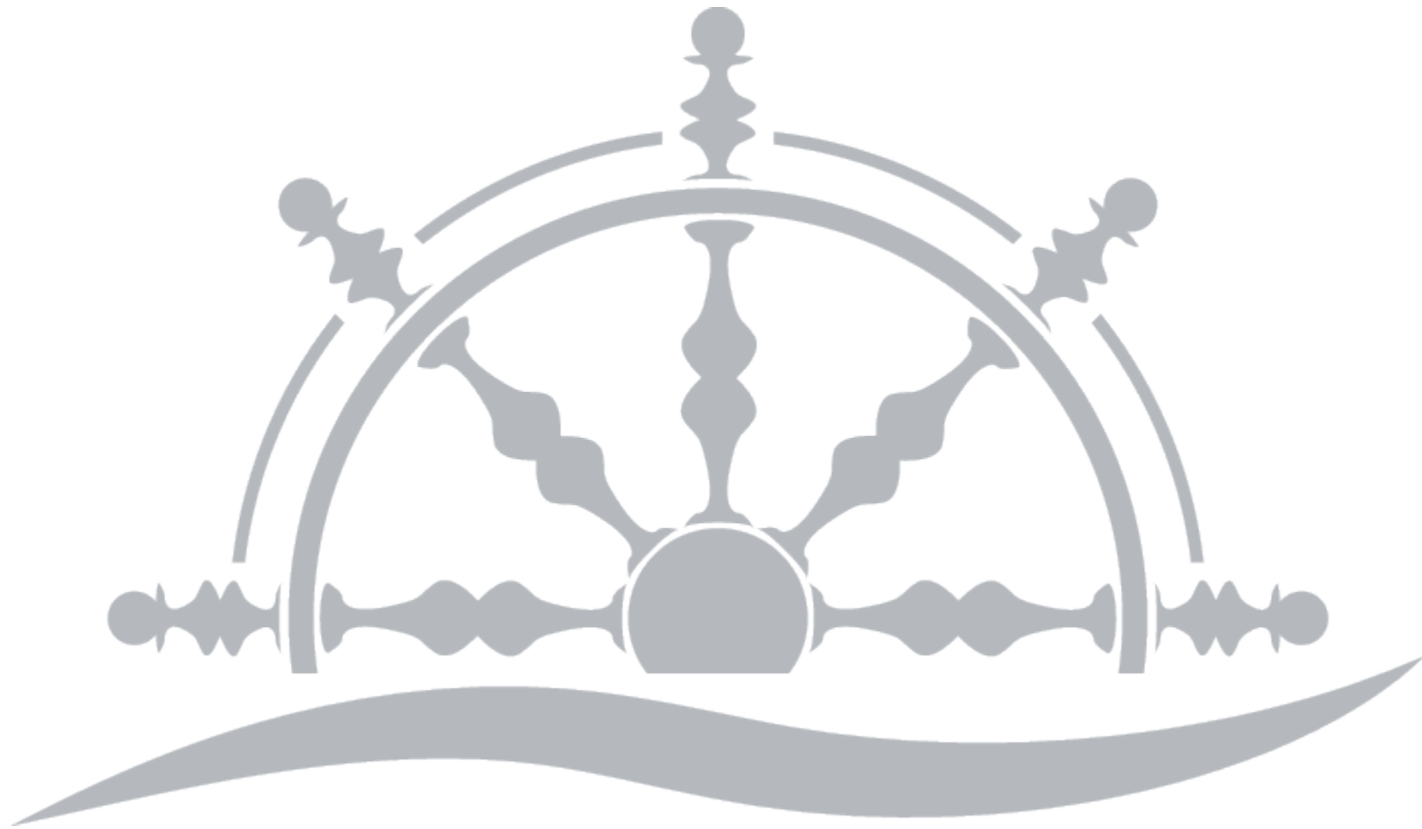
Part II Income or Loss From Partnerships and S Corporations **Note:** If you report a loss from an at-risk activity for which any amount is **not** at risk, you **must** check the box in column (e) on line 28 and attach **Form 6198**. See instructions.

27 Are you reporting any loss not allowed in a prior year due to the at-risk, excess farm loss, or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? If you answered "Yes," see instructions before completing this section. **Yes** **No**

28	(a) Name	(b) Enter P for partnership; S for S corporation	(c) Check if foreign partnership	(d) Employer identification number	(e) Check if any amount is not at risk
A			<input type="checkbox"/>		<input type="checkbox"/>
B			<input type="checkbox"/>		<input type="checkbox"/>
C			<input type="checkbox"/>		<input type="checkbox"/>
D			<input type="checkbox"/>		<input type="checkbox"/>
Passive Income and Loss			Nonpassive Income and Loss		
	(f) Passive loss allowed (attach Form 8582 if required)	(g) Passive income from Schedule K-1	(h) Nonpassive loss from Schedule K-1	(i) Section 179 expense deduction from Form 4562	(j) Nonpassive income from Schedule K-1
A					
B					
C					
D					
29a	Totals				
b	Totals				
30	Add columns (g) and (j) of line 29a				30
31	Add columns (f), (h), and (i) of line 29b				31 ()
32	Total partnership and S corporation income or (loss). Combine lines 30 and 31. Enter the result here and include in the total on line 41 below				32

Other Tax / Accounting Considerations

- Request a credit report
- Understand basis – most overlooked concept in property settlements
- Tax Cuts and Jobs Act:
 - Alimony no longer deductible / includible in income post-2017
 - 20% Qualified Business Income deduction for pass-through entities (subject to limitation)
 - Business interest limitation: 30% of ATI (Very similar to EBITDA)
 - Mortgage interest limitation: \$750,000
 - New C Corp Tax Rate: 21%



A STUDY IN FIREARMS AND BALLISTICS

BY: CHRISTOPHER ROBINSON

CURRICULUM VITAE

CHRISTOPHER N. ROBINSON **Forensic Consultant**

Work Address: 100 Bloomfield Way, Sharpsburg, GA 30277
Work Telephone: 770-714-2781
FAX Number: 678-423-4116
Email: chrisrobinsonforensics@gmail.com

EDUCATION:

Berry College - Bachelor of Science in Chemistry (8/1/91-5/30/1995)

POSITIONS HELD:

- Forensic Consultant & Instructor, Chris Robinson Forensics, 100 Bloomfield Way, Sharpsburg, Georgia 30277 (9/23/2010 – Present)
- Crime Lab Director, Atlanta Police Department Crime Lab, 180 Southside Industrial Parkway, Atlanta, Georgia 30354 (5/1/2008 - 9/23/2010)
- Firearms Examiner, Firearms Identification Section, Division of Forensic Sciences, Georgia Bureau of Investigation, 3121 Panthersville Road, Decatur Georgia 30034 (7/1/1998 - 5/1/2008)
- NIBIN Coordinator, Firearms Identification Section, Division of Forensic Sciences, Georgia Bureau of Investigation, 3121 Panthersville Road, Decatur Georgia 30034 (7/1/2001 - 5/1/2008)
- Technical Leader, Firearms Identification Section, Division of Forensic Sciences, Georgia Bureau of Investigation, 3121 Panthersville Road, Decatur Georgia 30034 (8/1/2006 - 5/1/2008)

CURRENT FIELD OF EXPERTISE:

I am currently working as a private consultant for both Prosecution & Defense entities within the United States. I am also responsible for the rendering of detailed written reports and testimony in judicial proceedings as forensic expert; and providing advice, assistance and training to elements in the investigative and judicial community.

TECHNICAL/SPECIALIZED TRAINING:

- Completed the resident training course in the discipline of Forensic Firearm and Tool mark Examination at the Georgia Bureau of Investigation, July 1999.
- Completed the resident training course of the NIBIN system at the Bureau of Alcohol, Tobacco, & Firearms in Atlanta, Georgia 1999.
- Completed the resident training course in the discipline of Gunshot Residue Analysis at the

Georgia Bureau of Investigation, April 2002.

- Smith and Wesson Police Armorer's Course, Smith and Wesson Company, Springfield, Massachusetts, December 1999. (Pistol and revolver)
- Glock Police Armorer's Course, Glock Firearms, Incorporated, Smyrna, Georgia, July 1999. (Pistol)
- Heckler and Koch Police Armorer's Course, Heckler and Koch inc., Sterling, Virginia, September 2000. (Pistol/Rifle)
- SigArms Police Armorer's Course, SigArms, Incorporated, Exeter, New Hampshire, September 2000. (Pistol)
- Beretta Police Armorer's Course, Beretta U.S.A. Corporation, US Army Crime Lab, Forest Park, Georgia, August 2002. (Pistol)
- Basic Crime Scene Training (Evidence Recognition, Documentation & Collection), Henry C. Lee Institute of Forensic Science, West Haven, Connecticut, October 2004.
- Intermediate Crime Scene Training (Detection & Enhancement of Latent Evidence), Henry C. Lee Institute of Forensic Science, West Haven, Connecticut, January/February 2005.
- Advanced Crime Scene Training (Crime Scene Analysis & Reconstruction), Henry C. Lee Institute of Forensic Science, West Haven, Connecticut, March 2005.
- Shooting Reconstruction, Henry C. Lee Institute of Forensic Science, West Haven, Connecticut, May 2005.
- Blood Pattern Analysis, Henry C. Lee Institute of Forensic Science, West Haven, Connecticut, June 2005.
- Remington Police Armorer's Course, Remington Arms Co., Inc., McDonough Police Department, McDonough, Georgia, October 2005. (Shotgun/Rifle)
- Colt Police Armorer's Course, Colt Defense L.L.C., Us Army Crime Lab, Forest Park, Georgia, February 2007. (Rifle)
- Ruger Police Armorer's Course, Sturm, Ruger, & Co., Inc., Us Army Crime Lab, Forest Park, Georgia, April 2007. (Pistol/Rifle)

MANUFACTURING TOURS/BRIEFINGS/SEMINARS:

- Advanced Armament Corporation, Silencer Seminar, Martin, GA (2008, 2009)
- Charter Arms Corporation, Manufacturing Plant, Stratford, CT (2000)
- Colt Firearms, Manufacturing Plant, Hartford, CT (2000)
- Dan Wesson Arms, Inc., Manufacturing Plant, Monson, MA (1999)
- Firearms Collection, Bureau of Alcohol, Tobacco and Firearms (BATF), Atlanta, GA (2000)
- Firearms Collection, Springfield Armory and Museum, Springfield, MA (1999)
- Marlin Firearms Company, Manufacturing Plant, North Haven, CT (2000)

- O. F. Mossberg and Sons, Inc., Manufacturing Plant, North Haven, CT (2000)
- Remington Arms Company, Manufacturing Plant, Ilion, NY (2000)
- SHOT Show, Atlanta, GA, Orlando, FL, Las Vegas, NV (1999, 2002, 2003, 2005, 2010, 2016)
- Smith and Wesson Company, Manufacturing Plant, Springfield, MA (1999)
- Thompson Center Arms, Manufacturing Plant, Rochester, NH (2000)
- Wilson Arms Company, Manufacturing Plant, Branford, CT (2000)
- Winchester Manufacturing Plant, New Haven, CT (2000)
- NRA National Firearms Museum, Fairfax, VA (2016)

CERTIFICATIONS:

Certified as a Firearm and Tool Mark Examiner by the Georgia Bureau of Investigation, July 1999.

Certified as a Gunshot Residue Analyst by the Georgia Bureau of Investigation, April 2002.

Certified as a Bloodstain Pattern Analyst by the Henry C. Lee Institute, June 2005.

Certified as a Crime Scene Reconstruction Analyst by the Henry C. Lee Institute, March 2005.

Certified as a Shooting Reconstruction Analyst by the Henry C. Lee Institute, May 2005.

TESTIMONY:

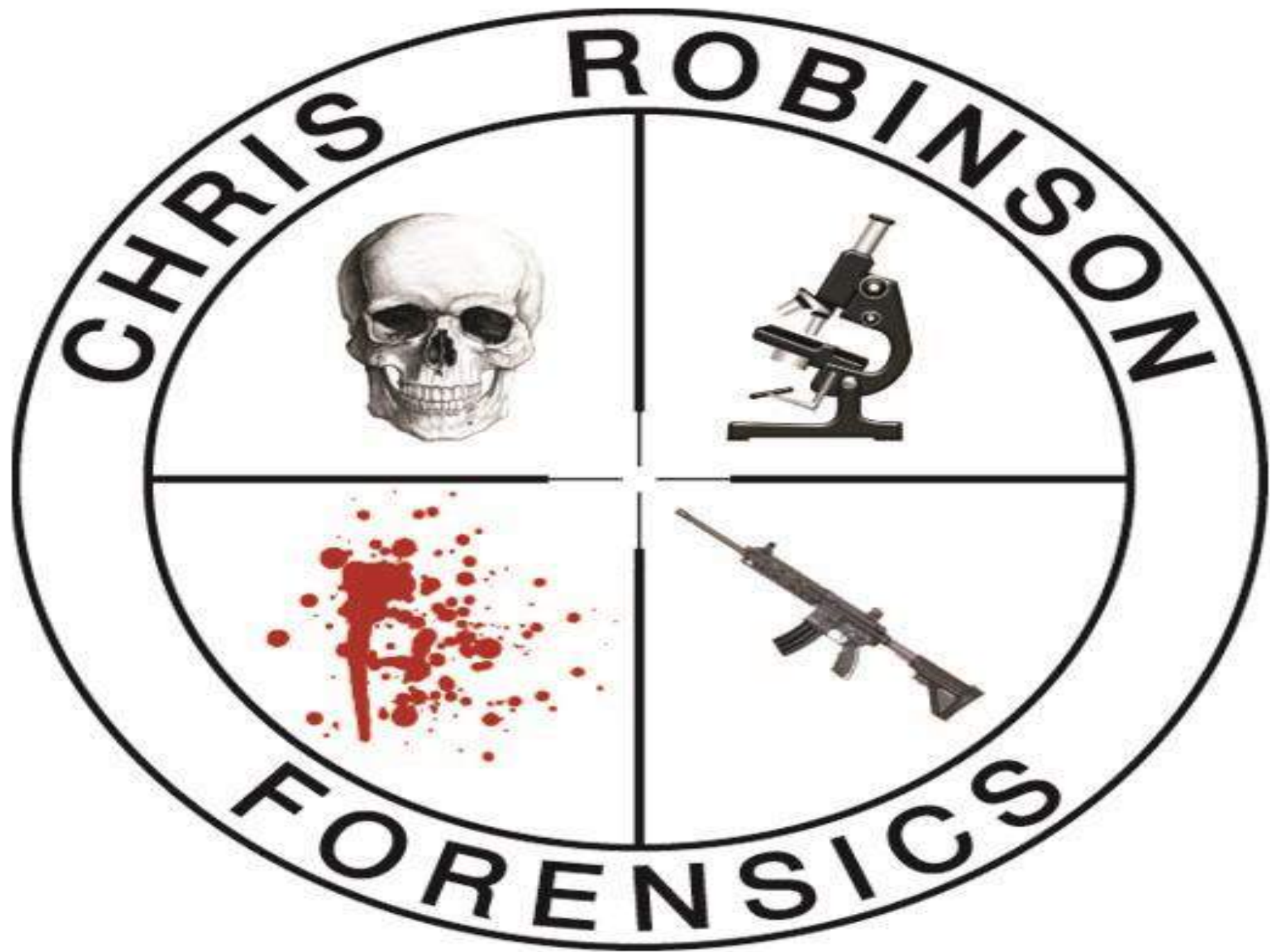
I have been called by the Prosecution & Defense to provide expert testimony pertaining to forensic examinations in the fields of Firearms & Tool Mark Examination, Shooting Reconstruction, Gunshot Residue Analysis, Blood Spatter Analysis, and Crime Scene Reconstruction. I have testified in the following courts:

State: Georgia Superior Court
Alabama Circuit Court
South Carolina Circuit Court
Mississippi Circuit Court
Alaska Superior Court
Louisiana District Court
Florida Circuit Court
Kansas District Court
Iowa District Court
United States District Court – District of Minnesota
Missouri Circuit Court
District of Columbia Superior Court
Illinois Circuit Court
Tennessee Circuit Court
Virginia Circuit Court
Massachusetts Superior Court
Wisconsin Circuit Court

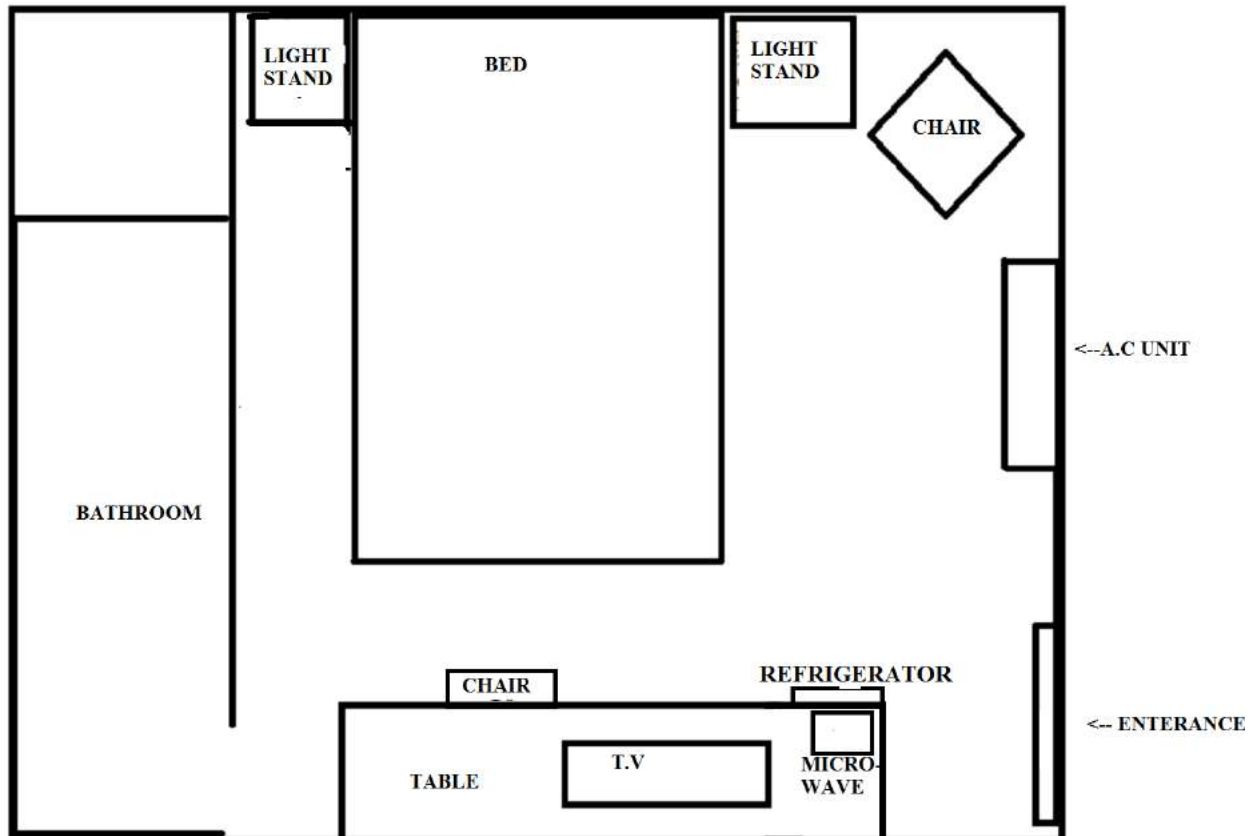
GUEST SPEAKER / CONSULTANT:

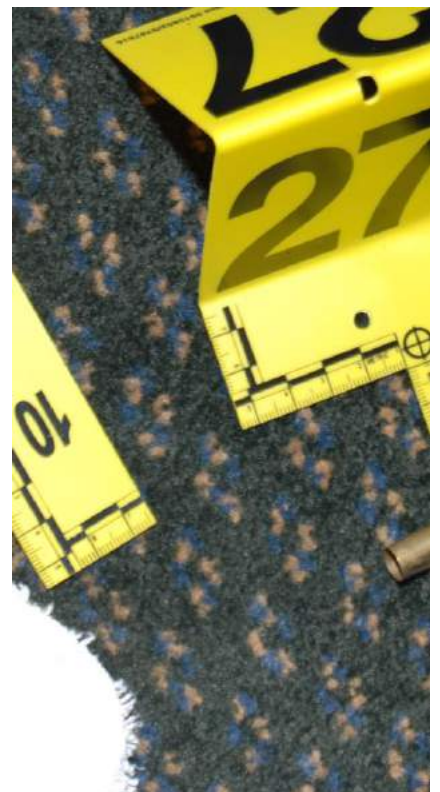
- Georgia State University College of Law
- Bauder College of Criminal Justice

- Institute of Continuing Legal Education (ICLE)
- CNN & Headline News
- Nancy Grace
- Ashley Banfield (Primetime Justice)
- Cold Justice
- Reasonable Doubt
- Forensic Files
- New Detectives
- Louisiana Public Defender Board
- Louisiana Association of Criminal Defense Lawyers
- Missouri Association of Criminal Defense Lawyers
- Southwest Georgia Public Defender Seminar
- Florida State University College of Law
- Mobile Criminal Defense Lawyers Association
- Georgia Association of Criminal Defense Lawyers
- District of Columbia Association of Criminal Defense Lawyers
- Florida Association of Criminal Defense Lawyers – Tallahassee Chapter
- Florida Association of Criminal Defense Lawyers – Miami Chapter
- Kansas Association of Criminal Defense Lawyers
- Alabama Criminal Defense Lawyers Association



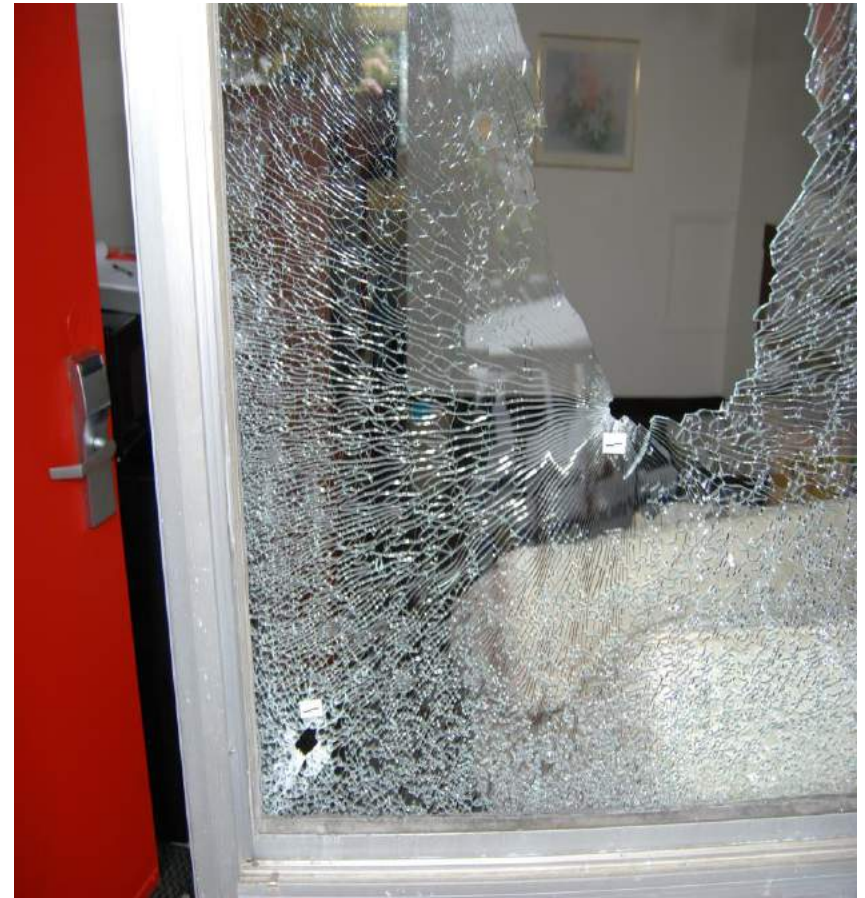
CASE #1





Case #1

Case #1



Case #1



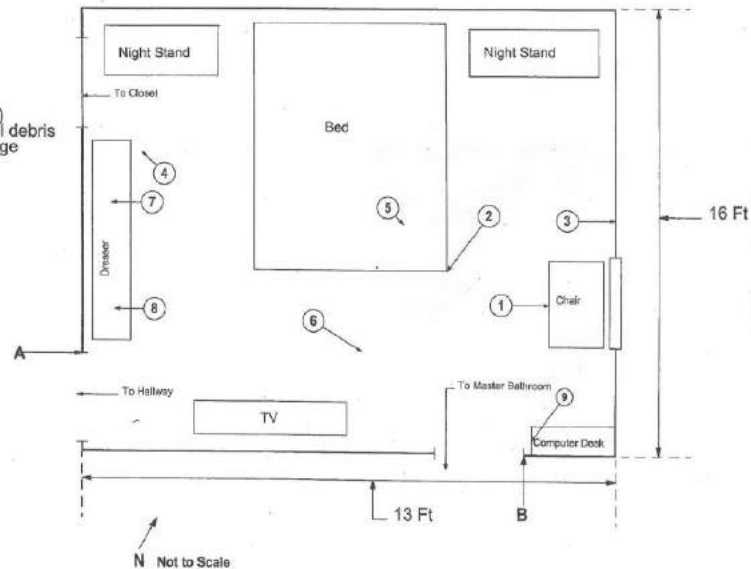
Case #2

Case# 20110528318
28 Fernwick Ct, Dallas, GA
Master Bedroom
05/30/2011

CSI/Det. Stephen M. Dooley
Paulding Co. Sheriff's Office
Criminal Investigations Division

Legend

- #1 Glock 23C Pistol
- #2 shell casing .40 caliber
- #3 bullet hole in wall
- #4 projectile
- #5 bullets .40 caliber (qty=3)
- #6 area of blood and medical debris
- #7 Smirnoff alcoholic beverage
- #8 Budweiser beer can
- #9 shell casing .40 caliber



01-0238-01-11

Case #2



Case #2



Case #2



Case #2



Case #2



Case #3



Case #3



Case #3



Case #3



Case #3



Case #4



Case #4



Case #4



Case #4



Case #4



Case #5



Case #5



Case #5



Case #5



Case #5



Case #5





Case #6

Case #6



Case #6



Case #6



Case #6





CHRIS ROBINSON
FORENSIC CONSULTANT

FAX - 678.423.4116

CELL - 770.714.2781

100 BLOOMFIELD WAY

SHARPSBURG, GA 30277

CHRISROBINSONFORENSICS@GMAIL.COM



WEAPONS

PISTOLS



GLOCK 9MM PISTOL



BERETTA



**SPRINGFIELD
ARMORY**



**FABRIQUE
NATIONALE**



**HECKLER
& KOCH**



SMITH & WESSON .45 PISTOL



HI-POINT



BRYCO



LORCIN

REVOLVERS



**SMITH & WESSON (INTERNAL
HAMMER)**

SMITH & WESSON (SHROUDED HAMMER)





(DOUBLE ACTION TRIGGER PULL)



(SINGLE ACTION TRIGGER PULL)

RIFLES



COLT AR-15 RIFLE



AK-47 RIFLE



BOLT ACTION RIFLE

SHOTGUNS



PUMP ACTION SHOTGUN



SEMI-AUTOMATIC SHOTGUN

SIDE BY SIDE BREAK OPEN SHOTGUN





OVER UNDER BREAK OPEN SHOTGUN

Type		Caliber		Manufacturer				
Model		Serial #		Location				
Rifling		# of barrels		Barrel Length				
Overall Length		Weight						
Choke		Safeties						
Type of Action								
Finish & Condition				Grip/Stock				
Condition of bore								
Test Bullet:	LIW		GIW		Mag.			
	Cap/Contents				Type			
Trigger Pull:								
S/A			(H)		(L)		Ave.	
D/A			(H)		(L)		Ave.	
Operating condition								
Prep. Of bore for tests				Chamber #'s used				
Cyl. Rotation								
# Tests	Source		Make & Cal.					
Bullet wt. & type								
FPN			MV		ft/sec		Exm Loc.	
BOB			ME		ft-lbs		Ejm Loc.	

AMMUNITION

FULL METAL JACKETED BULLET





JACKETED HOLLOW POINT BULLET

SEMI-JACKETED HOLLOW POINT BULLET



LEAD BULLET



KNURLED CANNELURE

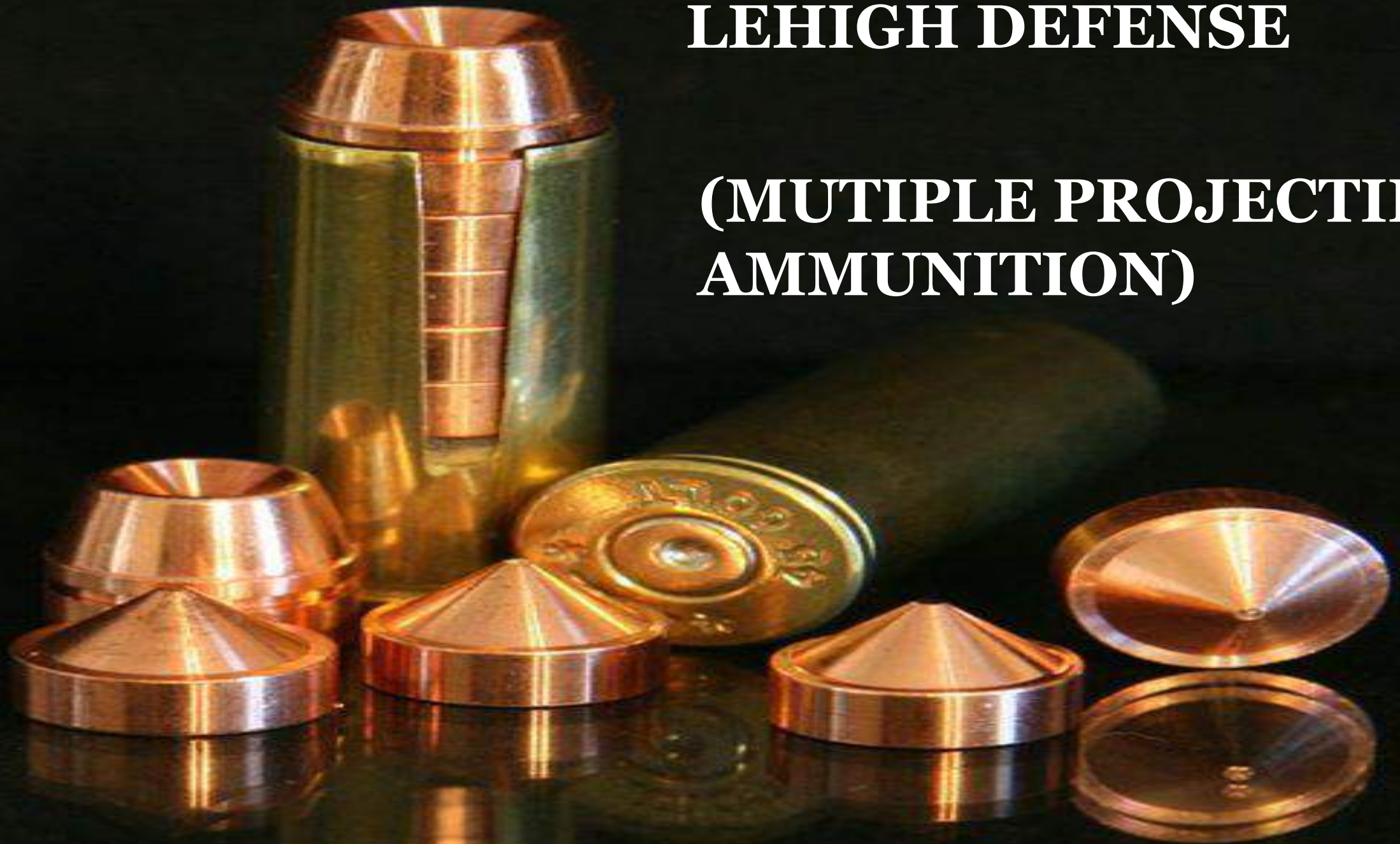


**G2 RESEARCH
(RADICALLY INVASIVE
PROJECTILE)**



LEHIGH DEFENSE

**(MULTIPLE PROJECTILE
AMMUNITION)**



LEHIGH DEFENSE (MAXIMUM EXPANSION)



Lehigh
Defense
LLC.

.45 ACP (20 Count)
174gr Maximum Expansion

1025 fps
p/n 01450174S

lot 11286

INCEPTOR ARX AMMUNITION)



WINCHESTER PDX1 DEFENDER AMMUNITION



SHOTGUN CARTRIDGES

BIRDSHOT

BUCKSHOT

SLUG



Item Number				
Item Source				
Caliber & Weight				
Composition				
Manufacturer?				
Actual Weight (Gr)				
L & G / Twist				
L & G for Comp.				
Potential for ID				
LIW Range				
GIW Range				
Damage				
Trace Evidence				
Examiner's Marks				

COMPARISONS	CLASS	INDIV	CONC.	REMARKS
T- / T-				
T- / T-				
T- / T-				
T- / EV-				
T- / EV-				
EV- / EV-				
EV- / EV-				

CARTRIDGE/CARTRIDGE CASES



Item Number					
Item Source					
Cartridge type					
Bullet Wt/Style					
F, U or Misfired					
Primer Color					
Case Composition					
Headstamp/					
Manufacturer					
Reload or					
Remanufactured					
Trace Evidence					
Damage					
Examiner's Marks					

COMPARISONS	CLASS	INDIV	CONC.	REMARKS
T- / T-				
T- / T-				
T- / T-				
T- / EV-				
T- / EV-				
EV- / EV-				
EV- / EV-				

TESTING

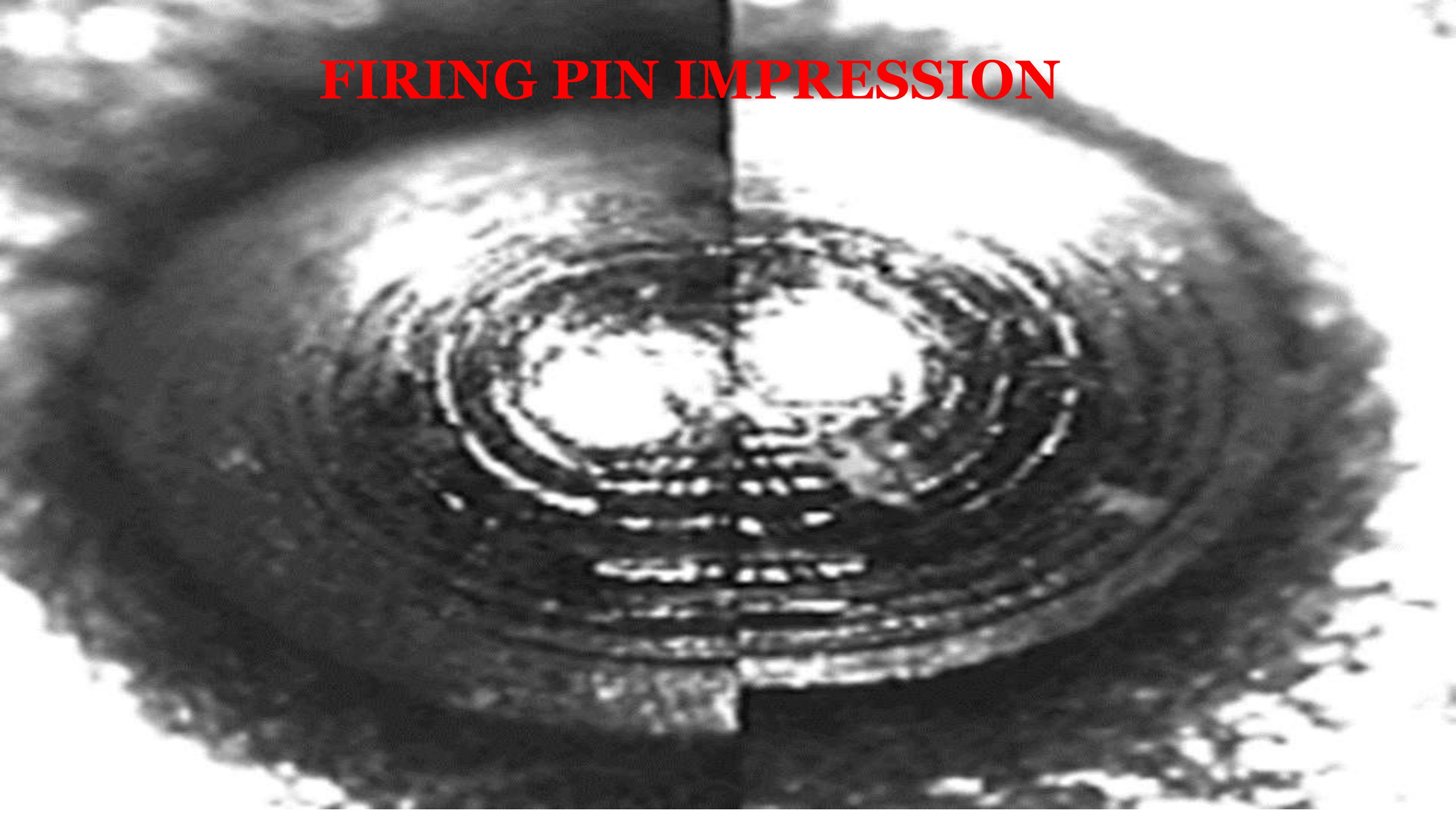


BREECHFACE MARKS

BREECHFACE MARKS



FIRING PIN IMPRESSION



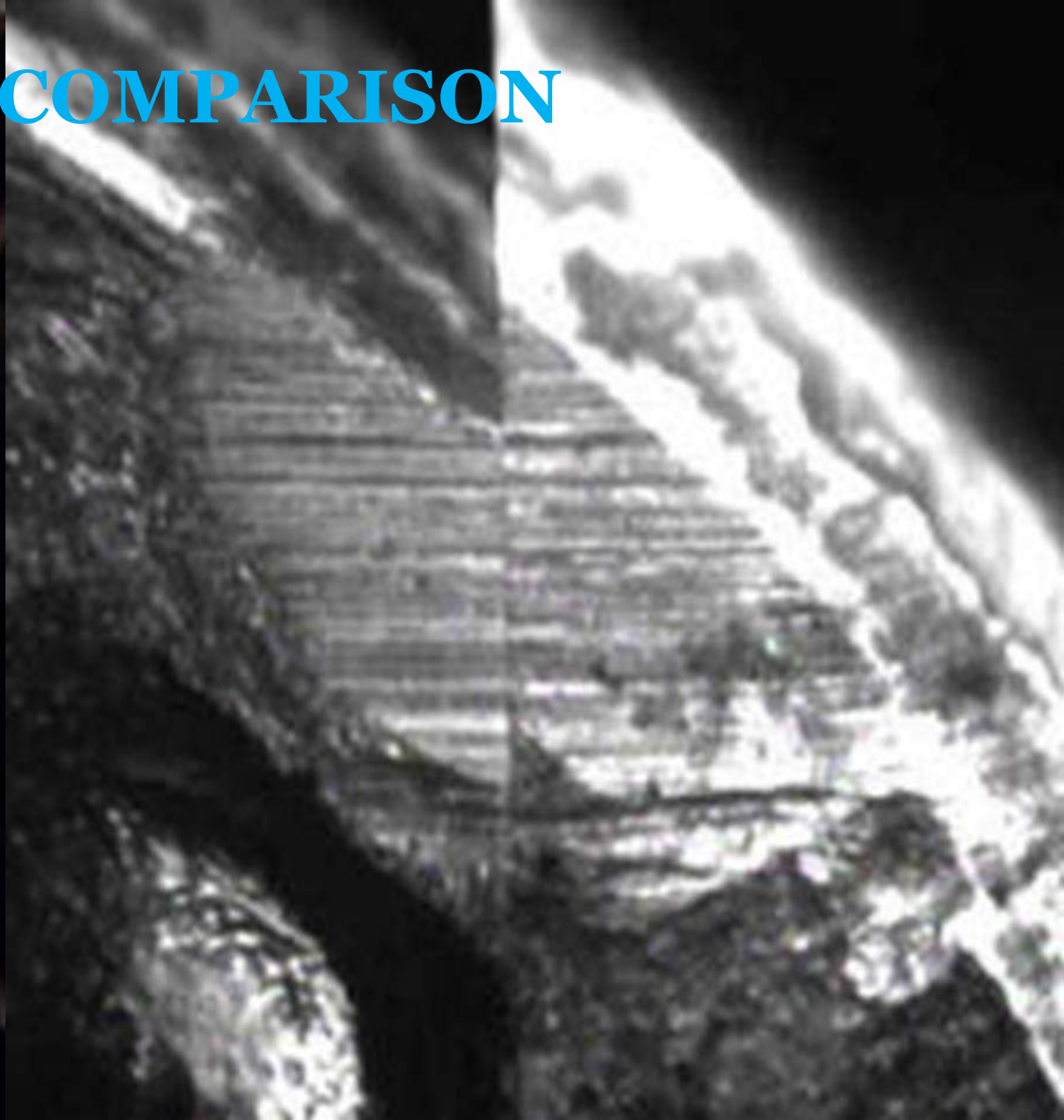
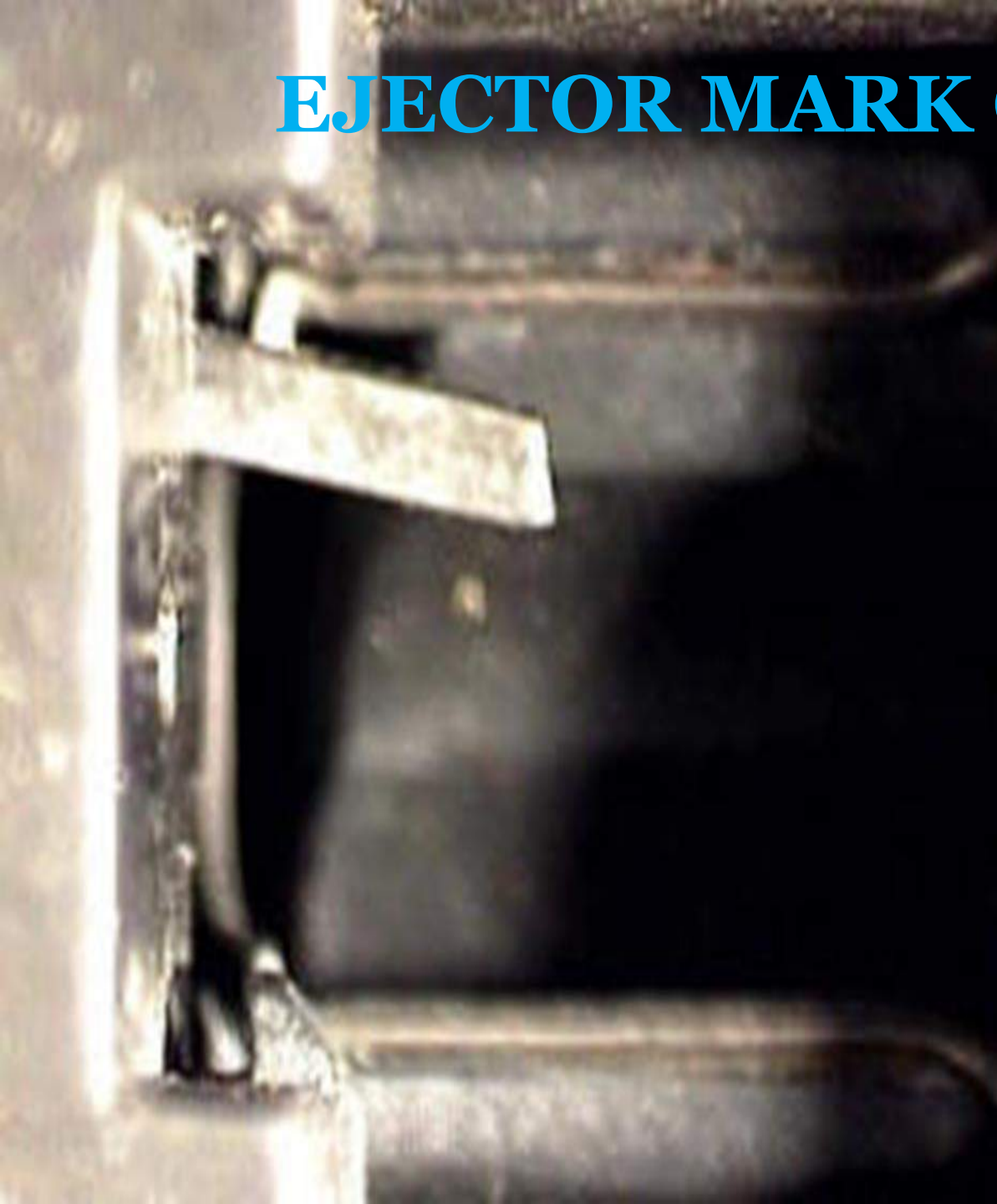
1.0 in

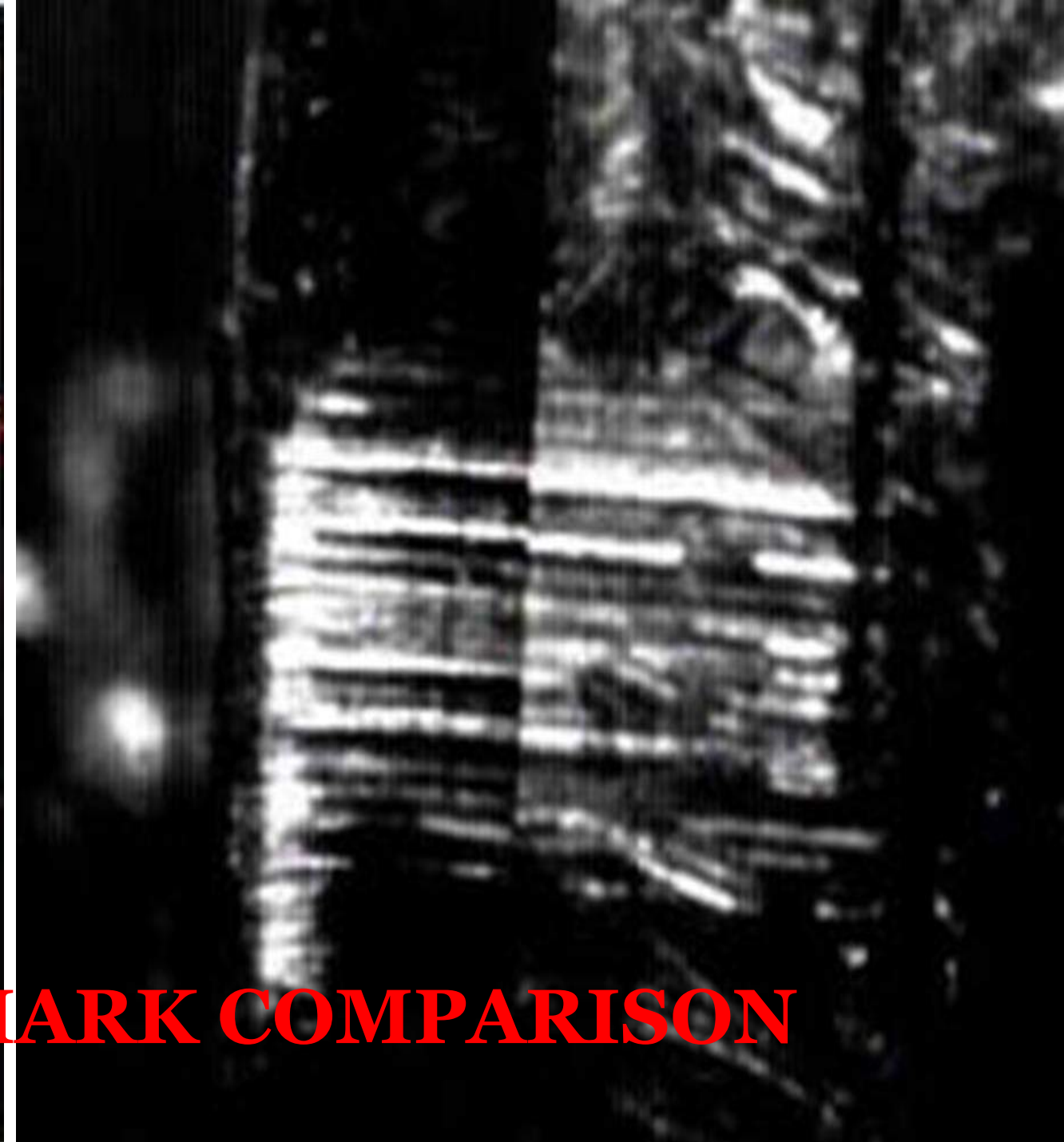
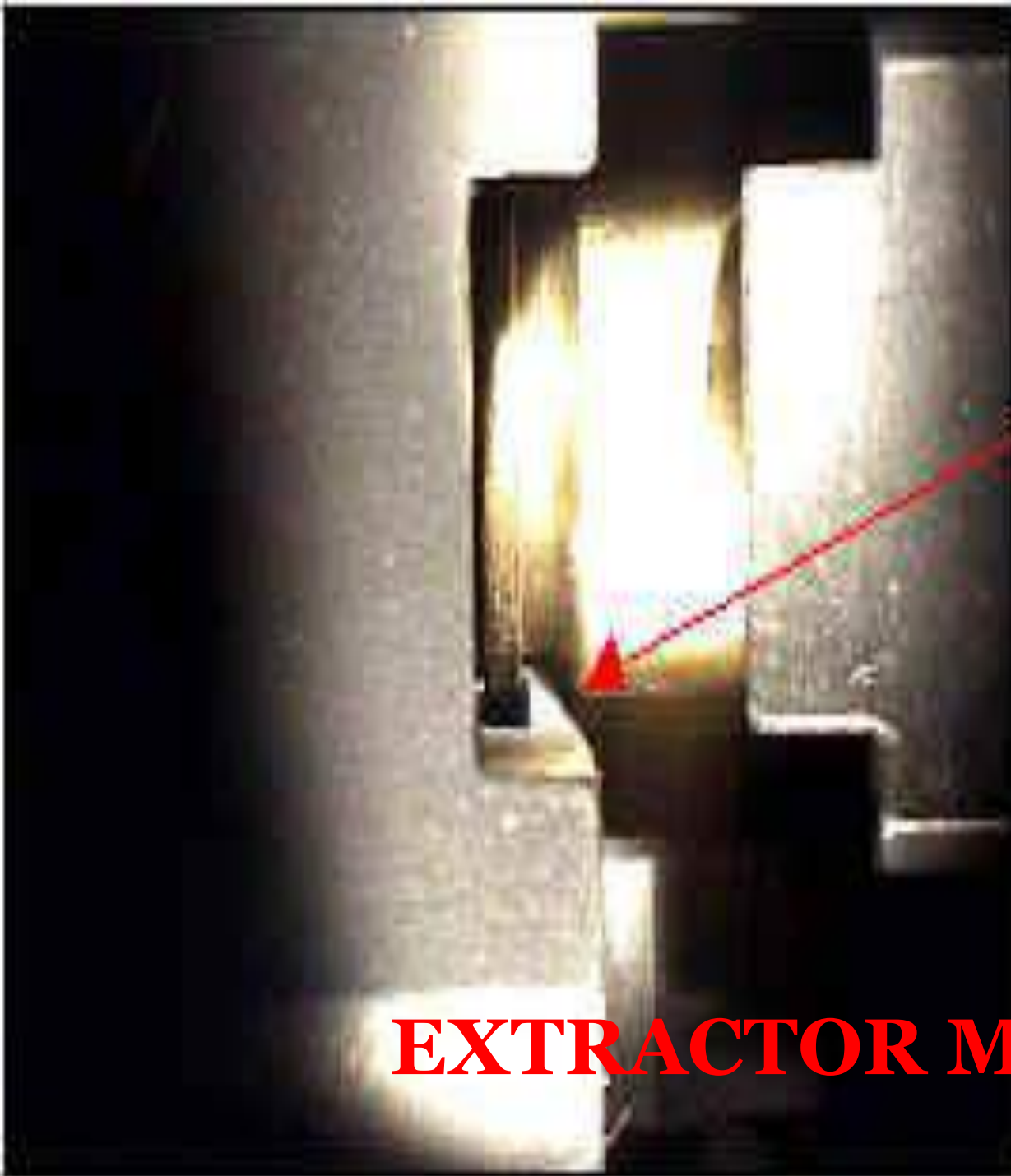
GLOCK FIRING PIN IMPRESSION

Forensic Analyst



EJECTOR MARK COMPARISON





EXTRACTOR MARK COMPARISON

CHAMBER MARKS COMPARISON





RIFLING (GROOVE) COMPARISON

A close-up photograph of a rifle barrel's interior, showing the rifling grooves. The barrel is divided into two vertical sections by a central seam. The top section has a lighter, more reflective surface, while the bottom section is darker and appears more worn. The rifling grooves are clearly visible as horizontal lines across the barrel's length.

RIFLING (GROOVE) COMPARISON

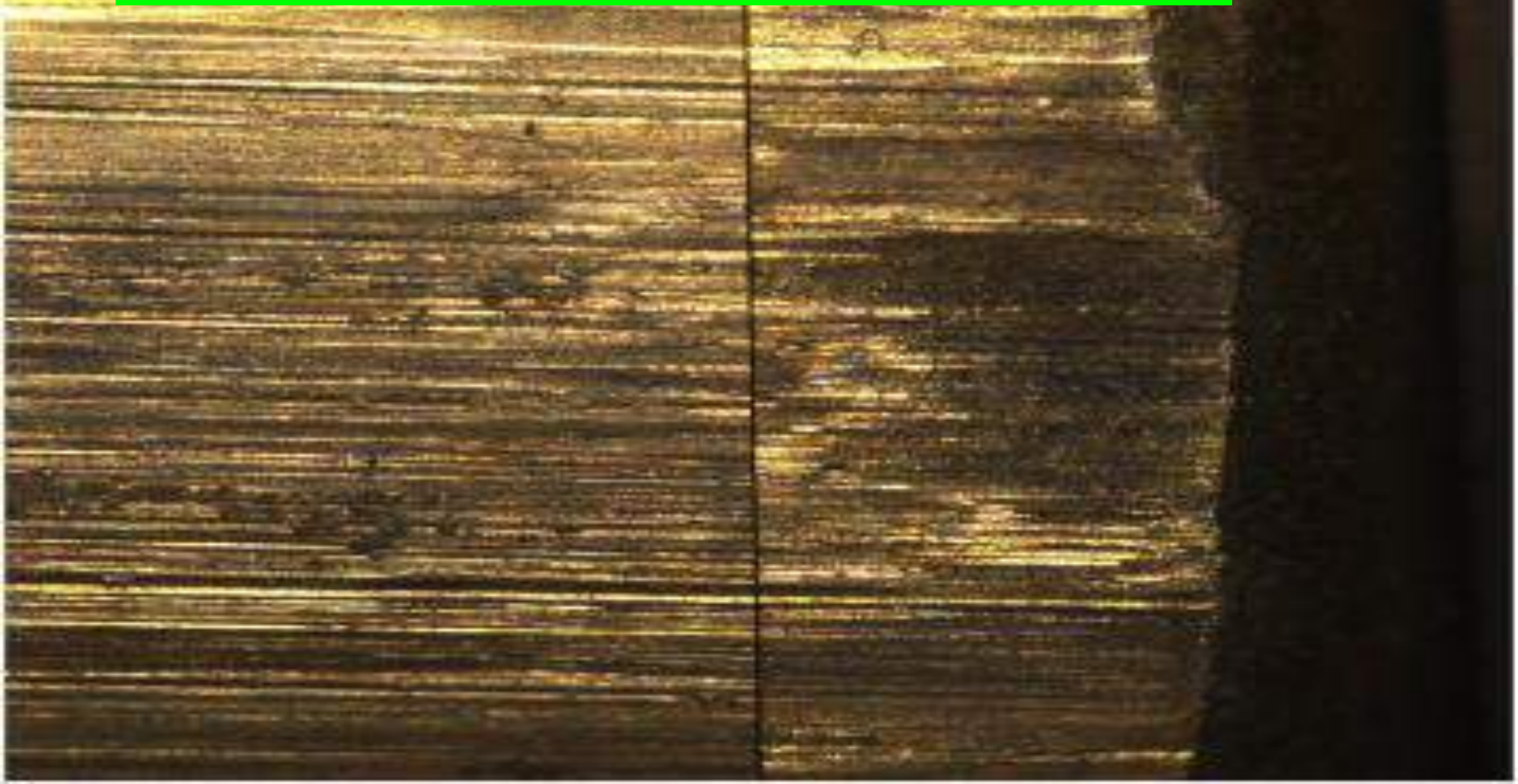


POLYGONAL RIFLING



CUT RIFLING

POLYGONAL RIFLING COMPARISON



TRIGGER PULL TESTING



Lyman®

6 LBS 2.5 OZ

AVG LBS/GM CLR READY

PATENT PENDING

47 Gen 4 AUSTRIA

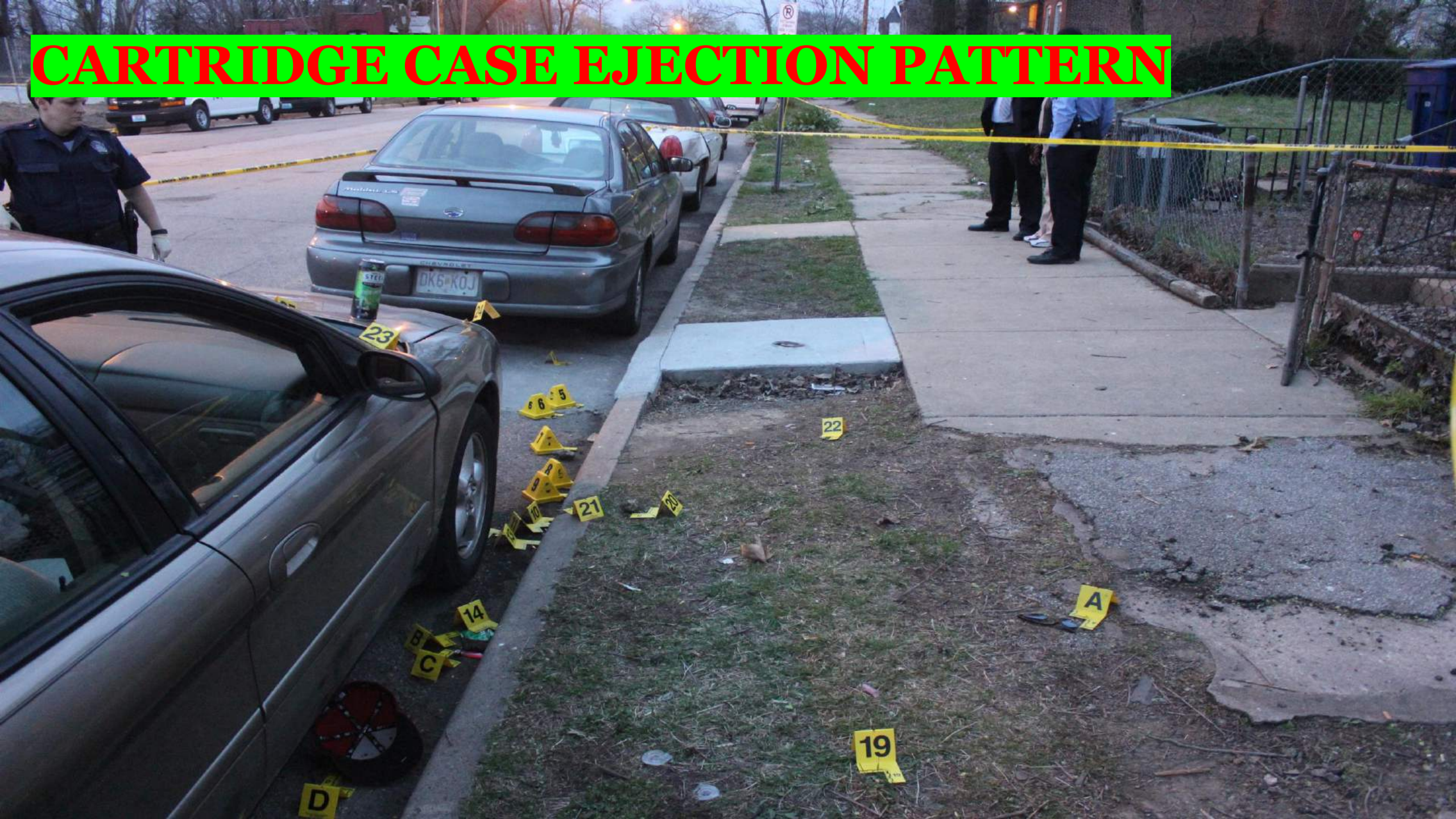


TRIGGER TRAVEL



TRIGGER TRAVEL

CARTRIDGE CASE EJECTION PATTERN

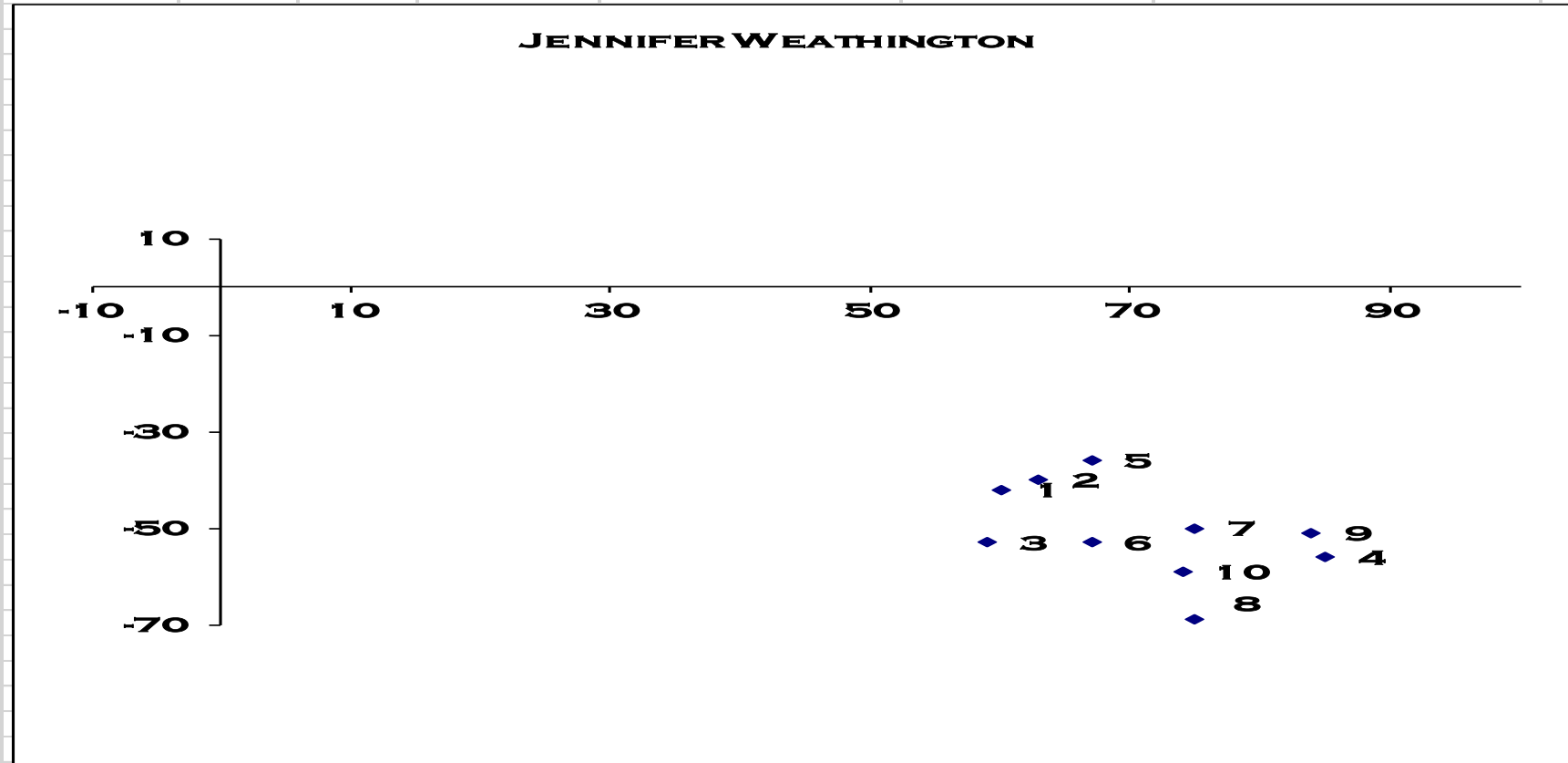




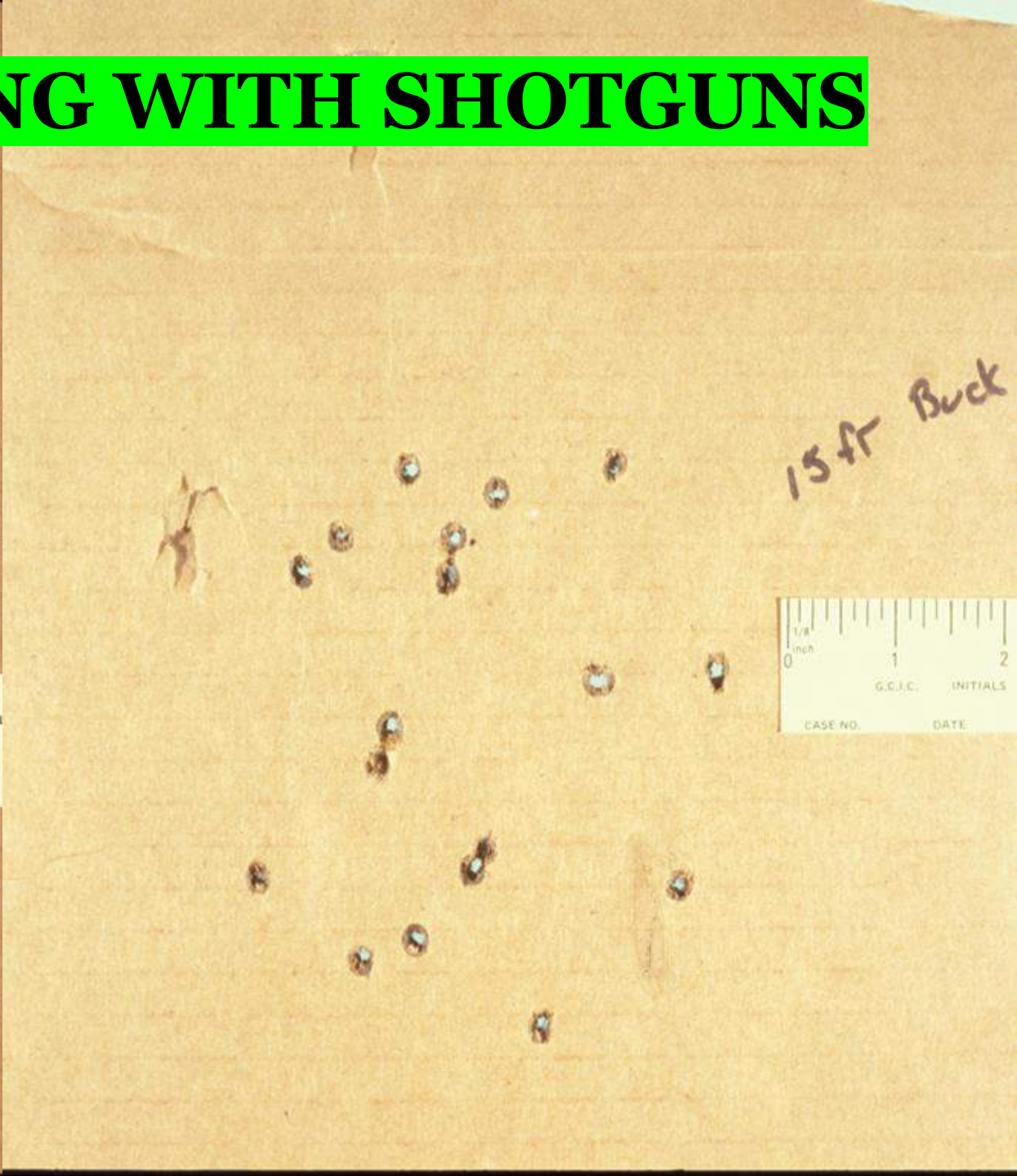
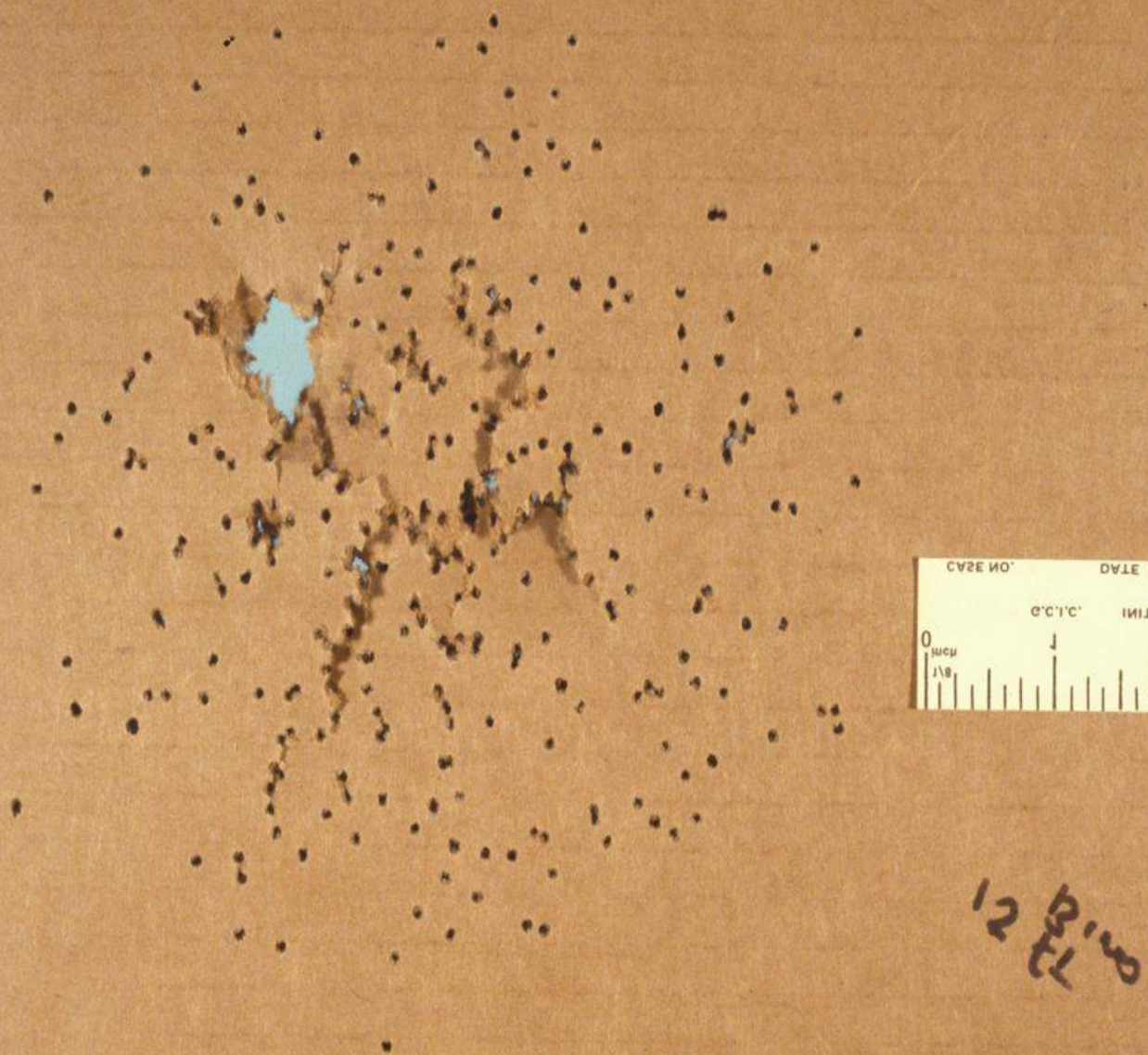
EJECTION PATTERN ANALYSIS

EJECTION PATTERN ANALYSIS

SHOT #	X	Y	ANGLE	DISTANCE (INCHES)	DISTANCE (FEET)	AVG. DISTANCE (INCHES)
1	60	-42	-34.99			
2	63	-40	-32.41	73.24	6.10	87.54
3	59	-53	-41.93	74.63	6.22	
4	85	-56	-33.38	79.31	6.61	AVG. DISTANCE
5	67	-36	-28.25	101.79	8.48	(FEET)
6	67	-53	-38.35	76.06	6.34	7.30
7	75	-50	-33.69	85.43	7.12	
8	75	-69	-42.61	90.14	7.51	AVG. ANGLE
9	84	-51	-31.26	101.91	8.49	-35.54
10	74	-59	-38.57	98.27	8.19	TESTING PERFORMED W/ GUN AT SHOULDER LEVEL
				94.64	7.89	



RANGE OF FIRE TESTING WITH SHOTGUNS





**BIRDSHOT PELLET
PATTERN ON BODY**

WADDING ABBRASION ON BODY

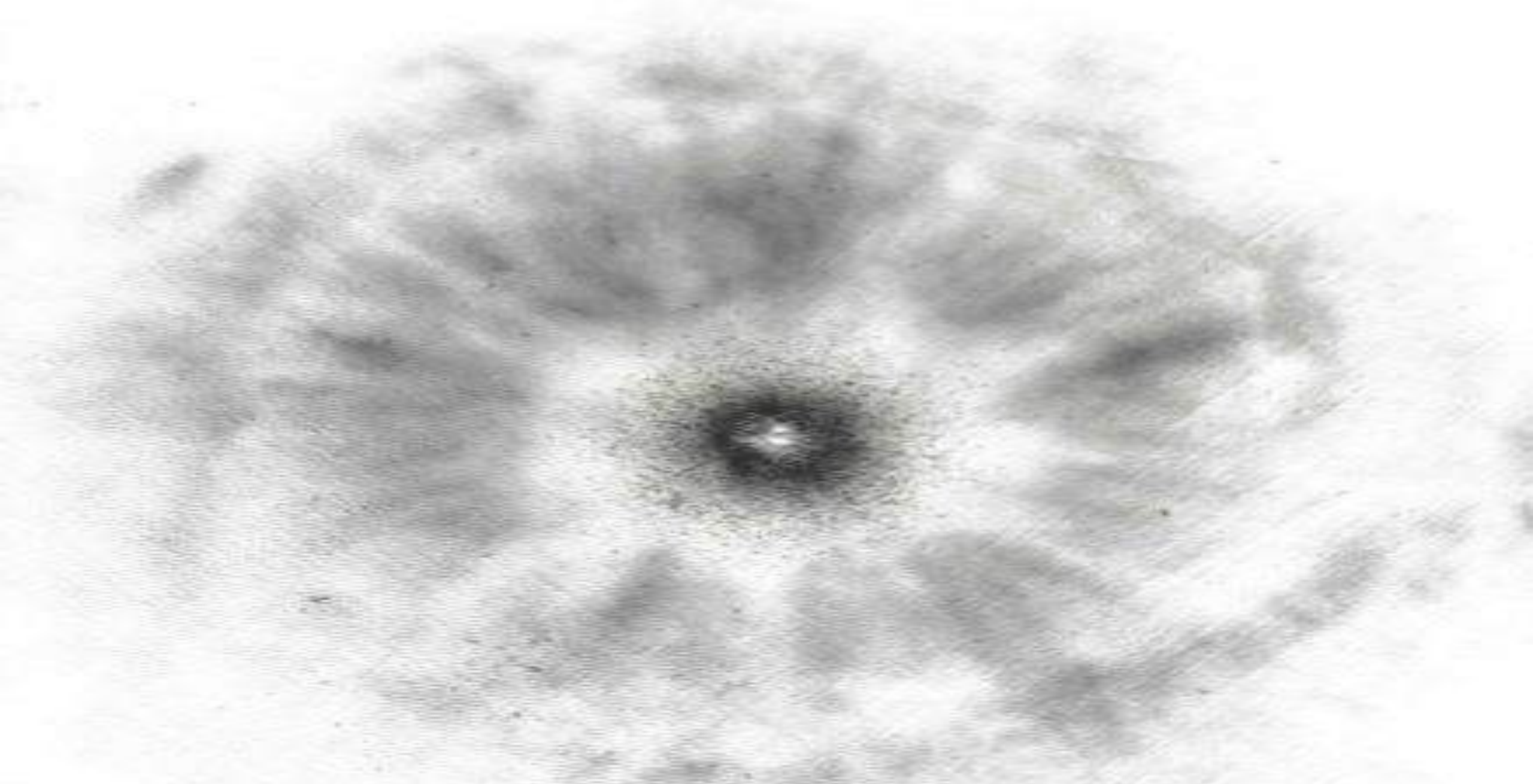




CONTACT TYPE GUNSHOT WOUND

VAPOROUS LEAD





VAPOROUS LEAD

12" Test

**SODIUM RHODIZONATE TESTING FOR
VAPOROUS LEAD**



15

GUNPOWDER ON CLOTH

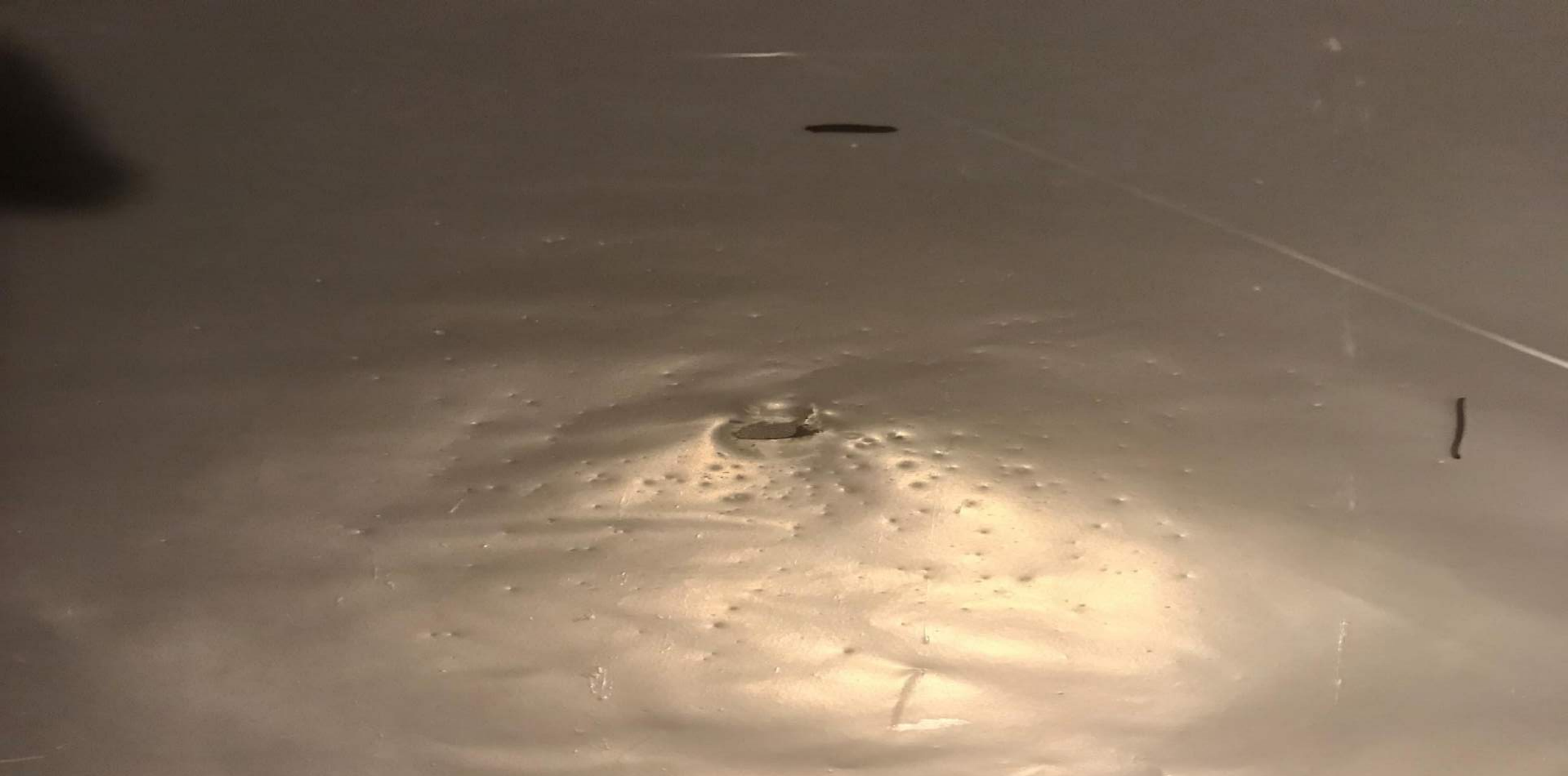
12" Test



MODIFIED GREISS TEST FOR GUNPOWDER PARTICLES ON CLOTHING

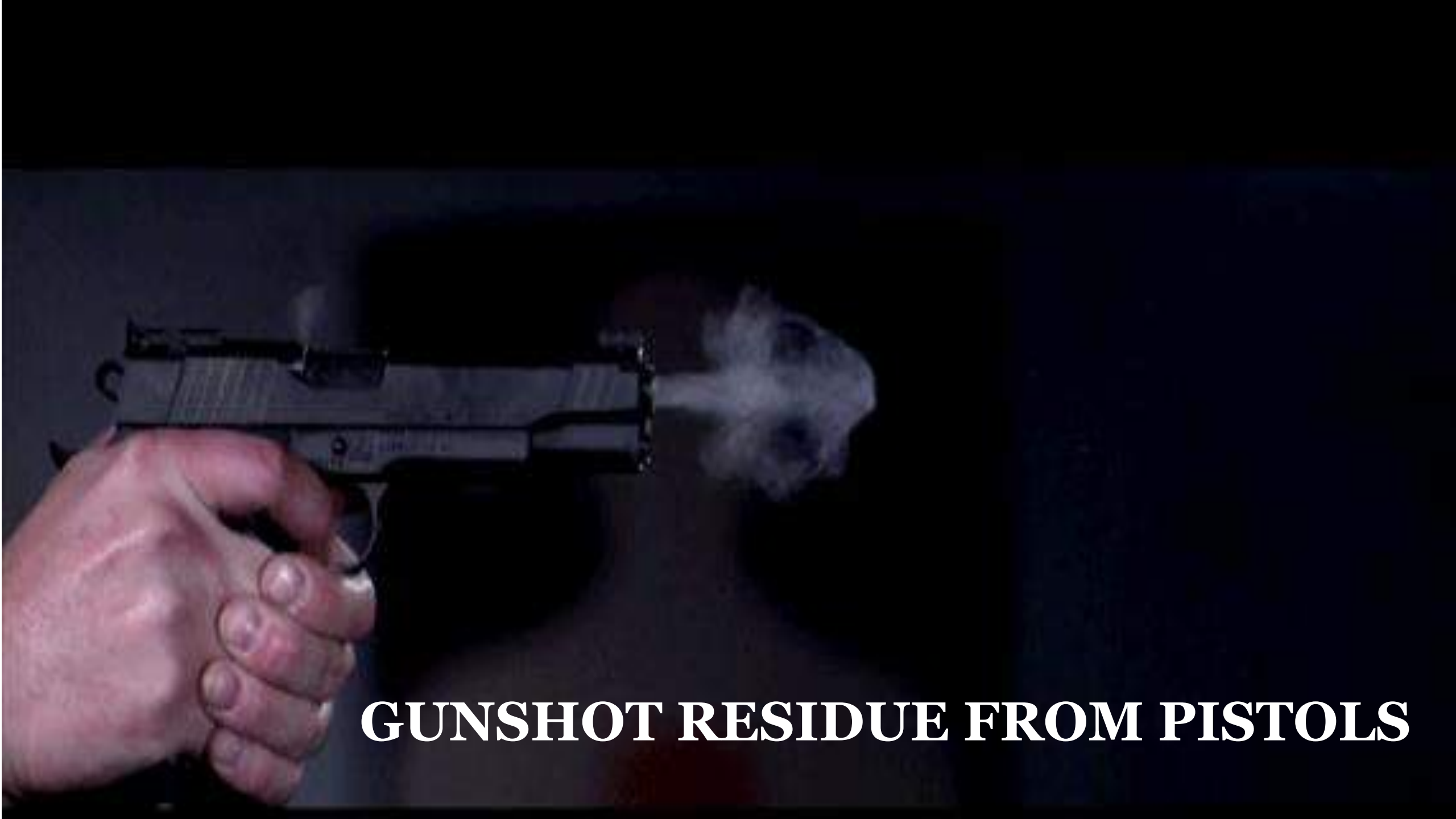


STIPPLING OF SKIN



STIPPLING TEST INTO PLASTIC

GUNSHOT RESIDUE



GUNSHOT RESIDUE FROM PISTOLS



GUNSHOT RESIDUE FROM REVOLVERS

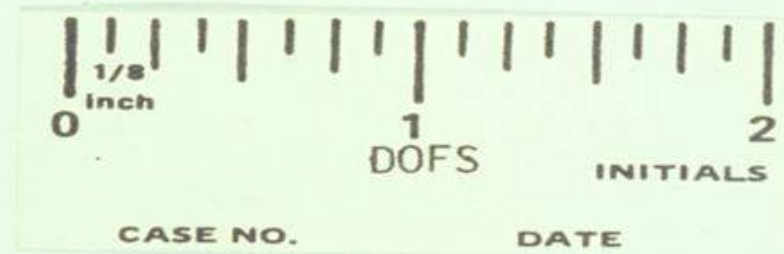


**INTERMEDIATE
TARGETS/
RICOCHETS**

NORMAL BULLET



RICOCHET BULLET





INTERMEDIATE OBJECT

**GUNSHOTS INTO
GLASS & METAL**

GUNSHOTS INTO GLASS



GUNSHOTS INTO METAL



X-RAY ANALYSIS OF BULLETS

CALIBER DETERMINATION BY X-RAY





CHRIS ROBINSON
FORENSIC CONSULTANT

FAX - 678.423.4116

CELL - 770.714.2781

100 BLOOMFIELD WAY
SHARPSBURG, GA 30277

CHRISROBINSONFORENSICS@GMAIL.COM

PLEASE VISIT MY WEBSITE:

WWW.CHRISROBINSONFORENSICS.COM

2019 Bills of Interest

Passed or Considered
by the
2019 Session
of the
General Assembly of Virginia

Invited Legislative Update Panelists:

from the Senate of Virginia
The Honorable Thomas K. Norment, Jr.
The Honorable Mark D. Obenshain
The Honorable William M. Stanley, Jr.

from the House of Delegates
The Honorable Jeffrey M. Bourne
The Honorable James A. Leftwich, Jr.



Virginia Trial Lawyers Association
60th Annual Convention
The Homestead
March 28, 2019

**Virginia Trial Lawyers Association’s
2019 Bills of Interest**

Tort Law page 3

Medical Malpractice page 9

Insurance Law page 10

Workers’ Compensation page 12

Criminal Law..... page 14

Family Law page 28

General Practice..... page 33

Judicial Administration..... page 35

Long Term Care page 36

Business / Commercial Law..... page 38

Employment..... page 39

Consumer page 41

Product Liability page 44

2019 VTLA BILLS OF INTEREST

TORT LAW

– PASSED –

[HB 1675](#) **Servicemembers Civil Relief Act; attorney fees.** Provides that, where the appointment of counsel is necessary pursuant to the Servicemembers Civil Relief Act, any attorney fees assessed shall not exceed \$125, unless the court deems a higher amount appropriate. **PASSED**

[HB 1662](#) **Child restraint devices and safety belts; emergency and law-enforcement vehicles.** Exempts the operators of emergency medical services agency vehicles, fire company vehicles, fire department vehicles, and law-enforcement agency vehicles during the performance of their official duties from (i) the requirement that certain minors be secured with a safety belt and (ii) the requirement that minors under the age of eight be secured in a child restraint device, provided that exigent circumstances exist and no child restraint device is readily available. **PASSED**

[HB 1767](#) **Wrongful death beneficiaries; parents who received support or services from the deceased for necessities.** Adds parents who received support or services from the deceased for necessities within 12 months prior to the decedent's death to the primary list of beneficiaries who may receive a distribution of wrongful death damages. This bill applies only to causes of action arising on or after July 1, 2019. This bill is identical to [SB 1543](#). **PASSED**

[HB 1772](#) **Virginia Freedom of Information Advisory Council; advisory opinions; evidence in civil proceeding.** Provides that any officer, employee, or member of a public body alleged to have willfully and knowingly violated the

Virginia Freedom of Information Act who acted in good faith reliance upon an advisory opinion issued by the Virginia Freedom of Information Advisory Council may introduce such advisory opinion as evidence that the alleged violation was not made willfully and knowingly. **PASSED**

[HB 1820](#) **Nondisclosure or confidentiality agreement; sexual assault; condition of employment.** Prohibits an employer from requiring an employee or a prospective employee to execute or renew any provision in a nondisclosure or confidentiality agreement that has the purpose or effect of concealing the details relating to a claim of sexual assault as a condition of employment. **PASSED**

[SB 1041](#) **Virginia Telephone Privacy Protection Act.** Provides that a telephone solicitor and the seller on whose behalf or for whose benefit a telephone solicitation call offering or advertising a seller's property, goods, or services is made or initiated are jointly and severally liable for violations of the Virginia Telephone Privacy Protection Act (§ 59.1-510 et seq.). The measure establishes a presumption that a telephone solicitation call offering or advertising a seller's property, goods, or services is made or initiated on behalf of or for the benefit of the seller and provides that this presumption may be rebutted if it is shown by clear and convincing evidence that (i) the seller did not retain or request the telephone solicitor to make telephone solicitation calls on the seller's behalf or for the seller's benefit and (ii) such telephone solicitation calls were made by the telephone solicitor without the seller's knowledge or consent. The measure removes a provision that authorized the Commissioner of the Department of Agriculture and Consumer Services to inquire into possible violations of

the Act and contains technical amendments. This bill is identical to [HB 2600](#). **PASSED**

[HB 1911](#) **Duties of drivers of vehicles approaching stationary vehicles displaying certain warning lights; penalty.** Makes a driver's failure to move into a nonadjacent lane on a highway with at least four lanes when approaching a stationary vehicle displaying flashing, blinking, or alternating blue, red, or amber lights, or, if changing lanes would be unreasonable or unsafe, to proceed with due caution and maintain a safe speed, reckless driving, which is punishable as a Class 1 misdemeanor. Under current law, a first such offense is a traffic infraction punishable by a fine of not more than \$250, and a second such offense is punishable as a Class 1 misdemeanor. **PASSED**

[HB 1944](#) **Civil actions; no-fault divorce; fees and costs.** Provides that, in the case of a no-fault divorce proceeding, there is a presumption that a party to the case who is the recipient of a state or federally funded public assistance program for the indigent is unable to pay the fees or costs. The bill further provides that, in such no-fault divorce proceeding, such person shall certify to the receipt of such benefits under oath. **PASSED**

[HB 1955](#) **Appellate damages.** Specifies that when any judgment is affirmed, whether in whole or in part, damages shall be awarded to the appellee on the portion of the judgment affirmed. **PASSED**

[HB 2143](#) **Air bags; manufacture, importation, sale, etc., of counterfeit or nonfunctional air bag prohibited; penalty.** Provides that a person is guilty of a Class 1 misdemeanor if he knowingly manufactures, imports, sells, installs, or reinstalls a counterfeit air bag or nonfunctional air bag, or any device that is intended to conceal a counterfeit air bag or nonfunctional air bag, in a motor vehicle. The

bill provides an exemption for the sale, installation, reinstallation, or replacement of a motor vehicle air bag on a vehicle solely used for police work. The bill also provides that any sale, installation, reinstallation, or replacement of a motor vehicle air bag with a counterfeit, nonfunctional, or otherwise unlawful air bag shall not be construed as a superseding cause that limits the liability of any party in any civil action. **PASSED**

[HB 2167](#) **Deposition of corporate officer.** Provides that when an officer, as defined in the bill, who is called as a deposition witness files a motion for a protective order because the discovery sought by the deposition is obtainable from some other source that is more convenient, less burdensome, or less expensive, the burden is on the party seeking the deposition to defeat such a motion by showing that (i) the officer's deposition is reasonably calculated to lead to the discovery of admissible evidence, (ii) the officer may have personal knowledge of discoverable information that cannot be discovered through other means, and (iii) a deposition of a representative other than the officer or other methods of discovery are unsatisfactory, insufficient, or inadequate. This bill is identical to [SB 1457](#). **PASSED**

[HB 2197](#) **Summary judgment; limited use of discovery depositions and affidavits.** Allows for the limited use of discovery depositions and affidavits in support of or in opposition to a motion for summary judgment, provided that the only parties to the action are business entities and the amount at issue is \$50,000 or more. This bill is identical to [SB 1486](#) **PASSED**

[HB 2242](#) **Statute of limitations; action based on an unsigned, written contract.** Provides that the statute of limitations for an action based on an unsigned, written contract is three years after the cause of action has accrued. This bill is

a recommendation of the Boyd-Graves Conference. **PASSED**

HB 2289 Jurisdiction of claim; plaintiff's motion to amend claim amount; transfer of matter. Provides that, where a matter is pending in either the general district court or the circuit court, upon motion of the plaintiff seeking to amend the amount of the claim, the court shall order transfer of the matter to the court having jurisdiction over the claim without requiring a dismissal of the claim or a nonsuit. The bill further provides that, where such an amended claim provides the general district court and the circuit court with concurrent jurisdiction over such a claim, the court shall transfer the matter to either the general district court or the circuit court, as directed by the plaintiff, provided that such court otherwise has jurisdiction over the matter. The bill further provides that, except for good cause shown, no such order of transfer shall issue unless the motion to amend and transfer is made at least 10 days before trial. The bill further provides that the plaintiff shall pay filing and other fees to the clerk of the court to which the case is transferred, prepare and present the order of transfer to the transferring court for entry, and provide a certified copy of the transfer order to the receiving court. **PASSED**

SB 1401 Department of Forensic Science; possession of unlawful items by employees; immunity. Provides that a Department of Forensic Science employee may lawfully possess or transfer contraband items or materials while engaged in the performance of his official duties. **PASSED**

SB 1542 Civil actions; determination of indigency. Provides that, in the case of a no-fault divorce proceeding, a person who is a current recipient of a state or federally funded public assistance program for the indigent shall not be subject to fees and costs. The bill further provides that, in such no-fault divorce

proceeding, such person shall certify to the receipt of such benefits under oath. **PASSED**

SB 1619 Spoliation of evidence. Establishes that a party or potential litigant has a duty to preserve evidence that may be relevant to reasonably foreseeable litigation. The bill further provides that a court (i) upon finding prejudice to another party from loss, disposal, alteration, concealment, or destruction of such evidence, may order measures no greater than necessary to cure the prejudice, or (ii) only upon finding that the party acted recklessly or with the intent to deprive another party of the evidence's use in the litigation, may (a) presume that the evidence was unfavorable to the party, (b) instruct the jury that it may or shall presume that the evidence was unfavorable to the party, or (c) dismiss the action or enter a default judgment. The bill further provides that no independent cause of action for negligent or intentional spoliation of evidence is created. **PASSED**

SB 1627 Summons for unlawful detainer; initial hearing; subsequent filings; termination notice. Provides that if an initial hearing on a summons for unlawful detainer cannot be held within 21 days from the date of filing, it shall be held as soon as practicable, but not later than 30 days after the date of the filing. The bill further provides that an order of possession for the premises in an unlawful detainer action shall not be entered unless the plaintiff or the plaintiff's attorney or agent has presented a copy of a proper termination notice that the court admits into evidence. The bill allows a plaintiff to amend the amount alleged to be due and owing in an unlawful detainer action to request all amounts due and owing as of the date of a hearing on the action and to further amend such an amount to include additional amounts that become due and owing prior to the final disposition of a pending unlawful detainer action. The bill prohibits a plaintiff from filing a subsequent and additional

unlawful detainer summons for such additional amounts. This bill is a recommendation of the Virginia Housing Commission and is identical to [HB 1922](#). **PASSED**

TORT LAW

— **FAILED** —

[HB 1624](#) **Sanctions; other frivolous pleadings.** Provides that a court may consider other similar, previously filed pleadings, motions, or other papers filed by a person in violation of the sanctions statute in determining sanctions on the case immediately before the court. **FAILED**

[SB 1084](#) **Use of firearm in commission of crime; civil liability.** Provides that a person may be held civilly liable for injury to the person or property of another or for wrongful death resulting from the use of a firearm in the commission of a crime if it can be shown by clear and convincing evidence that the firearm came into the possession of the person who committed the crime because of the failure of the civil defendant to reasonably secure the firearm from theft or unauthorized possession. The bill provides that a civil defendant exercising the ordinary standard of care for securing firearms will not be held civilly liable. **FAILED**

[SB 1119](#) **Mechanics' liens; right to withhold payment.** Specifies that the use of funds paid to a contractor or subcontractor by such contractor or subcontractor before paying all amounts due for labor performed or material furnished gives rise to a civil cause of action for a party who is owed such funds. The bill further specifies that such cause of action does not affect a contractor's or subcontractor's right to withhold payment for failure to properly perform labor or furnish materials and that any contractual provision that allows a party to withhold funds due on one contract for alleged

claims or damages due on another contract is void as against public policy. **FAILED**

[HB 1897](#) **Equine activity liability; carriage rides.** Incorporates, for the purposes of determining equine activity liability, the act of riding in or driving a carriage or other equine-drawn vehicle into the definition of "equine activity" and adds a person who gives a carriage ride to the definition of "equine professional." The bill includes numerous technical amendments. **FAILED**

[HB 2027](#) **Action against parents for minor knowingly possessing a firearm on school property; civil liability.** Creates a civil cause of action against the parent, guardian, legal custodian, or other person standing in loco parentis of a minor for injury to the person or property of another or for wrongful death resulting from the minor knowingly possessing a firearm on school property if it can be shown by clear and convincing evidence that the minor came into possession of such firearm because of the failure of the civil defendant to reasonably secure the firearm. The bill provides that any recovery from the parent, guardian, legal custodian, or other person standing in loco parentis of such minor shall not preclude full recovery from such minor, except to the amount of recovery from such parent, guardian, legal custodian, or other person standing in loco parentis. **FAILED**

[HB 2044](#) **Medical records; subpoena duces tecum; additional time to comply.** Provides that a health care provider may make a written request to the party requesting the subpoena duces tecum or the party on whose behalf the subpoena was issued for such party's consent to an additional seven days within which to comply with such subpoena, which consent shall not be unreasonably withheld, provided such subpoena was served within 15 days of the return date and provided such additional time does not adversely affect a party's ability to

timely prepare for trial, depositions, or such other proceeding. **FAILED**

[HB 2111](#) Immunity from civil liability; abuse of process, malicious prosecution, or intentional infliction of emotional distress; statements made in the course of judicial proceedings or communications made relating to criminal conduct. Adds statements made in the course of judicial proceedings and communications made to any government officer relating to potential criminal conduct to the list of persons' statements that are immune from certain actions or civil liability. The list further adds abuse of process, malicious prosecution, and intentional infliction of emotional distress to the list of actions from which such person is immune. **FAILED**

[HB 2116](#) Disposition of the remains of a decedent; right to control. Establishes a priority order for the right to control the disposition of the remains of a decedent; the location, manner, and condition of disposition; and the arrangements for funeral goods and services to be provided, as well as circumstances that would forfeit this right. The bill establishes procedures for resolving disagreements among those who have the right to control and provides liability protections for licensed funeral establishments, funeral service licensees, registered crematories, or registered crematory operators that rely in good faith upon the instructions of an individual claiming the right of disposition. **FAILED**

[SB 1282](#) Safety belt systems; rear passengers; primary offense. Expands the requirement that any driver and any person at least 18 years of age use a safety belt system in the front seat while a motor vehicle is in motion on a public highway to include occupants in rear passenger seats, defined in the bill. The bill makes any violation of the statute governing the required use of safety lap belts and shoulder harnesses a primary offense. **FAILED**

[SB 1302](#) Rights of persons with disabilities; procedures for certain actions; website accessibility. Requires a person who alleges that the website of a bank, trust company, savings institution, or credit union does not comply with applicable law regarding its accessibility by the vision impaired or hearing impaired to provide such entity with notice of the alleged violation at least 120 days prior to filing a civil cause of action. If the entity cures the defect within the 120 days, then the court shall dismiss the action. The bill also requires the court to dismiss a cause of action filed after the defendant has cured the defect and award reasonable costs and attorney fees to the defendant. **FAILED**

[SB 1309](#) Immunity of employers and potential employers; reports of violent behavior. Provides civil immunity to an employer who makes a report to a potential employer or law-enforcement agency of violent or threatened violent behavior, as defined in the bill, by an employee or former employee, provided that such a report was made in good faith and with reasonable cause to make such report. The bill further provides immunity to a potential employer who receives such a report and takes reasonable action in good faith to respond to the violent or threatened violent behavior noted in such report. The bill further provides that the court shall award reasonable attorney fees and costs to any employer or potential employer who has a suit dismissed against him pursuant to the immunity provided to him. **FAILED**

[SB 1341](#) Use of handheld personal communications devices while driving. Prohibits any person from holding a handheld personal communications device while driving a motor vehicle. Current law prohibits only the reading of any email or text message and manually entering letters or text in such a device as a means of communicating. The bill expands the exemptions to include

handheld personal communications devices that are being held and used (i) as an amateur radio or a citizens band radio; or (ii) for official Department of Transportation or traffic incident management services. **FAILED**

[HB 2257](#) **Dangerous or vicious dogs; emotional distress damages.** Authorizes a general district court to order the owner of a dog that is found to be a dangerous dog to pay restitution for emotional distress damages to any person injured by the animal or whose companion animal was injured or killed by the animal. The bill also authorizes the court to order the owner of a dog that is found to be a vicious dog to pay restitution for emotional distress damages to any person injured by the animal or to the estate of any person killed by the animal. **FAILED**

[HB 2264](#) **Safety belt system use in motor vehicles.** Requires all occupants of motor vehicles to utilize a safety belt system. Current law requires the use of safety belts only by (i) occupants under the age of 18, (ii) drivers, and (iii) passengers 18 years of age or older occupying the front seat. The bill changes a violation of safety belt system requirements by a person occupying a front seat from a secondary offense to a primary offense. **FAILED**

[HB 2364](#) **Major information technology project procurement; terms and conditions; limitation of liability provisions.** Requires, in any contract for a major information technology project, terms and conditions relating to the indemnification obligations and liability of a supplier to be reasonable and to not exceed in aggregate twice the value of the contract. The bill also provides that there is be no limitation on the liability of a supplier for (i) any intentional or willful misconduct, fraud, or recklessness of a supplier or any employee of a supplier or (ii) claims for bodily injury, including death, and damage to real property or tangible personal property resulting from the negligence

of a supplier or any employee of a supplier. The bill provides an exception to such conditions where the Secretary of Administration approves a reasonable maximum alternative limitation of liability amount recommended by the Chief Information Officer of the Commonwealth based on a risk assessment showing exceptional risk to the Commonwealth. This bill is identical to [SB 1329](#). **FAILED**

[SB 1550](#) **Bicyclists and other vulnerable road users.** Provides that a person who operates a motor vehicle in a careless or distracted manner and is the proximate cause of serious physical injury to a vulnerable road user, defined in the bill as a pedestrian or person riding a bicycle, electric wheelchair, electric bicycle, wheelchair, skateboard, skates, foot-scooter, animal, or animal-drawn vehicle, is guilty of a traffic infraction. The bill prohibits the driver of a motor vehicle from using or crossing into a bicycle lane to pass or attempt to pass another vehicle except to provide traffic incident management services, when directed by a law-enforcement officer, or when the roadway is otherwise impassable due to weather conditions, an accident, or an emergency situation. **FAILED**

[HB 2675](#) **Initiation of a civil action; clerk of a general district court.** Requires a general district court clerk to file, process, and issue for service of process any pleading initiating a civil action in the general district court within 14 days of receipt of such pleading. **FAILED**

MEDICAL MALPRACTICE

– PASSED –

[HB 1640](#) **Health carriers; nurse practitioners.** Requires health insurers and health services plan providers whose policies or contracts cover services that may be legally performed by licensed nurse practitioners to provide equal coverage for such services when rendered by a licensed nurse practitioner. The bill contains an enactment that exempts the measure from the requirement that the Health Insurance Reform Commission review any legislative measure containing a mandated health insurance benefit or provider. The bill has a delayed effective date of October 1, 2019.

PASSED

[SB 1161](#) **Expedited review of adverse coverage determinations; cancer patients.** Provides that a covered person shall not be required to have exhausted his health carrier's internal appeal process before seeking an external review of an adverse determination regarding coverage of treatment if the treatment is to treat his cancer. The measure provides that a covered person may request an expedited external review if the adverse determination relates to the treatment of a cancer of the covered person. The measure requires health carriers' notices of the right to an external review to notify covered persons of this provision. This bill is identical to [HB 1915](#).

PASSED

[SB 1106](#) **Licensure of physical therapists and physical therapist assistants; Physical Therapy Licensure Compact.** Authorizes Virginia to become a signatory to the Physical Therapy Licensure Compact. The Compact permits eligible licensed physical therapists and physical therapist assistants to practice in Compact member states, provided they are licensed in at least one member state. In addition, the bill requires each applicant for licensure in the Commonwealth as a physical therapist or physical therapist assistant to submit

fingerprints and provide personal descriptive information in order for the Board to receive a state and federal criminal history record report for each applicant. The bill has a delayed effective date of January 1, 2020, and directs the Board of Physical Therapy to adopt emergency regulations to implement the provisions of the bill. **PASSED**

[HB 1971](#) **Health professions and facilities; adverse action in another jurisdiction.** Provides that the mandatory suspension of a license, certificate, or registration of a health professional by the Director of the Department of Health Professions is not required when the license, certificate, or registration of a health professional is revoked, suspended, or surrendered in another jurisdiction based on disciplinary action or mandatory suspension in the Commonwealth. The bill extends the time by which the Board of Pharmacy (Board) is required to hold a hearing after receiving an application for reinstatement from a nonresident pharmacy whose registration has been suspended by the Board based on revocation or suspension in another jurisdiction from not later than its next regular meeting after the expiration of 30 days from receipt of the reinstatement application to not later than its next regular meeting after the expiration of 60 days from receipt of the reinstatement application. **PASSED**

MEDICAL MALPRACTICE

– FAILED –

[HB 2128](#) **Telemedicine; physicians licensed in contiguous jurisdictions.** Authorizes a person licensed to practice medicine or osteopathy who is in good standing with the applicable regulatory agency of a jurisdiction that is contiguous to the Commonwealth to provide health care services to patients located in the Commonwealth through use of telemedicine services. **FAILED**

[SB 1439](#) Death certificates; medical

certification; electronic filing. Requires the completed medical certification portion of a death certificate to be filed electronically with the State Registrar of Vital Records through the Electronic Death Registration System and provides that, except for under certain circumstances, failure to file a medical certification of death electronically through the Electronic Death Registration System shall constitute grounds for disciplinary action by the Board of Medicine. The bill includes a delayed effective date of January 1, 2020, and a phased-in requirement for registration with the Electronic Death Registration System and electronic filing of medical certifications of death for various categories of health care providers. The bill directs the Department of Health to work with stakeholders to educate and encourage physicians, physician assistants, and nurse practitioners to timely register with and utilize the Electronic Death Registration System. **FAILED**

[HB 2556](#) Department of Health Professions and health regulatory boards; information obtained in an investigation or disciplinary proceeding; authorized disclosures.

Provides that provisions protecting the confidentiality of information obtained during an investigation or disciplinary hearing do not prohibit the disclosure of information about a suspected violation of state or federal law or regulation to state law enforcement. Under current law, such disclosure is authorized only to agencies within the Health and Human Resources Secretariat or to federal law-enforcement agencies. The bill also provides that investigative staff of agencies to which disclosure is authorized are not prohibited from interviewing fact witnesses, disclosing to fact witnesses the identity of the subject of the complaint or report, or reviewing with fact witnesses any portion of records or other supporting documentation necessary to refresh the fact witnesses' recollection. **FAILED**

INSURANCE LAW

– PASSED –

[HB 1867](#) Motor vehicle insurance; compliance verification. Requires motor vehicle insurance companies to report all required insurance information to the Department of Motor Vehicles (DMV) within 30 days of a policy change and to respond to all DMV requests for acknowledgment by confirming or denying the existence of an insurance policy within 15 days of receiving the request. The measure requires such insurers to report all necessary insurance information to the DMV electronically. The measure updates the types of policy updates and necessary data fields required to operate DMV's insurance verification process. The measure requires DMV to initiate the insurance verification process following receipt of a report that it processed an uninsured motorist claim involving an uninsured motor vehicle registered in Virginia. The measure provides that if a customer opts to surrender his license plates to DMV online or by telephone, he is not entitled to a partial refund of the cost of registration fees. The measure authorizes the DMV to dispense with a customer's suspension if a customer provides evidence that he was in compliance with Virginia's insurance laws. The measure renames the fee charged after a violation of Virginia's insurance laws from the uninsured motor vehicle fee to the noncompliance fee, increases the fee from \$500 to \$600, and directs the additional revenue to the DMV's special fund to be used for enhancements to DMV's insurance verification program. The measure also amends Virginia's installment payment program to (i) allow out-of-state individuals to apply for an installment payment plan; (ii) allow a customer to enter into a second installment payment plan after defaulting on the first plan; and (iii) authorize the Commissioner to extend an installment payment due date by up to 30 days when events outside of DMV's control adversely

affect its ability to accept payment. An enactment clause requires DMV to report in 2024 to the General Assembly on the effectiveness of this measure in improving the insurance verification program. An enactment clause postpones the effective date of the provisions that require electronic filing of insurance information and update the types of data required to be provided by insurers. This bill is identical to [SB 1787](#). **PASSED**

[HB 1883](#) Motor vehicle insurance policies; foster parents and foster children. Prohibits an insurer from refusing to issue or failing to renew a motor vehicle insurance policy solely because of the status of the applicant or policyholder, as applicable, as a foster care provider or a person in foster care. **PASSED**

[SB 1293](#) Uninsured motorist insurance coverage; settlement and release. Provides that any release executed as a result of a liability insurer settling a personal injury claim with an underinsured claimant for the available limits of the liability insurer's coverage shall not operate to release any parties other than the liability insurer and the underinsured motorist. The bill clarifies that neither a duty to defend nor an attorney-client relationship is created between the underinsured motorist and counsel for the underinsured motorist benefits insurer without the express intent and agreement of the underinsured motorist. The measure modifies the language in the written notice that is required to be provided to the underinsured motorist upon settlement to further clarify that no attorney-client relationship or duty to defend is created between the underinsured motorist and the underinsured motorist benefits insurer as a result of the settlement and release. The bill clarifies that by sending the notice and release to the underinsured motorist's last known address by certified mail, the liability insurer satisfies the requirement of having the

underinsured motorist sign the release and initial the notice. **PASSED**

[HB 2230](#) Insurance; use of credit

rating. Clarifies what constitutes adverse action in the use of credit in the rating and underwriting of homeowners and private passenger automobile insurance policies. An insurer is required to notify the applicant or insured when an insurer takes adverse action based on credit information. The measure conforms the definition of adverse action to the U.S. Supreme Court's decision in *Safeco Insurance Company v. Burr*, in which it held that an adverse action has occurred only when the use of credit information puts the applicant or insured in a worse position than if credit had not been considered. **PASSED**

[HB 2538](#) Balance billing; elective

services. Requires a facility where a covered person receives scheduled elective services to post the required notice or inform the covered person of the required notice at the time of pre-admission or pre-registration. The bill also requires such a facility to inform the covered person or his legal representative of the names of all provider groups providing health care services at the facility, that consultation with the covered person's managed care plan is recommended to determine if the provider groups providing health care services at the facility are in-network providers, and that the covered person may be financially responsible for health care services performed by a provider that is not an in-network provider, in addition to any cost-sharing requirements. **PASSED**

[SB 1565](#) Travel insurance. Establishes procedures and requirements for travel protection plans and travel administrators. The measure establishes travel insurance as an inland marine line of insurance sold by property and casualty insurance agents. The measure (i) prohibits any person from acting as a limited lines travel insurance agent unless properly

licensed, (ii) prohibits any person from acting as a travel retailer unless properly registered, and (iii) authorizes the State Corporation Commission to take enforcement actions, including suspending, revoking, or terminating a license. The measure establishes a premium tax on travel insurance premiums paid by residents of the Commonwealth and establishes acceptable practices for the sale and advertising of travel insurance. The measure applies to travel insurance policies purchased on or after July 1, 2019. This bill is identical to [HB 2186](#).

PASSED

INSURANCE LAW

– FAILED –

[SB 1117](#) Uninsured and underinsured motorist insurance policies; bad faith.

Provides that if an insurance company denies, refuses, or fails to pay its insured, or refuses a reasonable settlement demand within the policy's coverage limits for a claim for uninsured or underinsured motorist benefits within a reasonable time after being presented with a demand for such benefits and it is subsequently found that such denial, refusal, or failure was not in good faith, then the insurance company shall be liable to the insured for the full amount of the judgment and reasonable attorney fees, expenses, and interest. **FAILED**

WORKERS COMPENSATION

– PASSED –

[HB 1804](#) Workers' compensation; presumption of compensability for certain diseases. Adds cancers of the colon, brain, or testes to the list of cancers that are presumed to be an occupational disease covered by the Virginia Workers' Compensation Act when firefighters and certain employees develop the cancer. The measure will become effective if reenacted by the 2020 Session of the General Assembly. The measure also directs the 2020 Session of the General Assembly, in considering and enacting any legislation relating to workers' compensation and the presumption of compensability for certain cancers, to consider any research, findings, and recommendations from the Joint Legislative Audit and Review Commission's review of the Virginia Workers' Compensation program. The provisions of this bill do not become effective unless reenacted by the 2020 Session of the General Assembly. This bill is identical to [SB 1030](#). **PASSED**

[HB 2022](#) Workers' compensation; filing of claim. Provides that if an employer has received notice of an accident resulting in compensable injury to an employee and the employer has paid compensation or wages to such employee during incapacity for work resulting from such injury or the employer has failed to file the report of said accident with the Virginia Workers' Compensation Commission or otherwise has under a workers' compensation plan or insurance policy furnished or caused to be furnished medical service to such employee, the statute of limitations applicable to the filing of a claim shall be tolled until the last day for which such payment of compensation or wages or furnishment of medical services is provided and that occurs more than six months after the date of accident. The measure provides that no such payment of wages or workers' compensation benefits or furnishment of

medical service occurring after the expiration of the statute of limitations applies to this provision. The measure also provides that (i) if the employer has failed to file a first report, the statute of limitations shall be tolled during the duration thereof until the employer filed the first report of accident and (ii) if more than one of the above tolling provisions applies, whichever of those causes the longer period of tolling shall apply. **PASSED**

[SB 1030](#) Workers' compensation; presumption of compensability for certain diseases. Adds cancers of the colon, brain, or testes to the list of cancers that are presumed to be an occupational disease covered by the Virginia Workers' Compensation Act when firefighters and certain employees develop the cancer. The measure will become effective if reenacted by the 2020 Session of the General Assembly. The measure also directs the 2020 Session of the General Assembly, in considering and enacting any legislation relating to workers' compensation and the presumption of compensability for certain cancers, to consider any research, findings, and recommendations from the Joint Legislative Audit and Review Commission's review of the Virginia Workers' Compensation program. The provisions of this bill do not become effective unless reenacted by the 2020 Session of the General Assembly. The bill incorporates [SB 1022](#), [SB 1172](#), and [SB 1528](#) and is identical to [HB 1804](#). **PASSED**

[SB 1729](#) Workers' compensation; payment of claims. Prohibits a health care provider from submitting a claim to the Workers' Compensation Commission seeking additional payment for medical services rendered to a claimant before July 1, 2014, if the health care provider has previously accepted payment for the same medical services pursuant to the federal Longshore and Harbor Workers' Compensation Act. The measure prohibits the Commission from adjudicating any such claim. **PASSED**

WORKERS COMPENSATION

– FAILED –

[HB 1706](#) **Workers' compensation;**

PTSD. Declares that post-traumatic stress disorder (PTSD) suffered by a first responder is an occupational disease suffered in the line of duty if, among other conditions, the PTSD is demonstrated by clear and convincing evidence to have resulted from the responder's documented exposure to a qualifying event in the course of his employment. Qualifying events include seeing a deceased minor, directly witnessing the death of a minor, and seeing a decedent whose death involved grievous bodily harm of a nature that shocks the conscience. The measure also requires employers of first responders to provide educational training related to PTSD awareness, prevention, mitigation, and treatment. JLARC will study this issue in the coming months.

FAILED

[HB 1747](#) **Workers' compensation; retaliatory discharge of employee.** Prohibits an employer or other person from discharging an employee if the discharge is motivated to any extent by knowledge or belief that the employee has filed a claim or taken or intends to take certain other actions under the Virginia Workers' Compensation Act. Currently, retaliatory discharges are prohibited only if the employer or other person discharged an employee solely because the employee has taken or intends to take such an action. **FAILED**

[HB 1748](#) **Workers' compensation; employer to notify employee of intent.** Requires an employer whose employee has filed a claim under the Virginia Workers' Compensation Act to advise the employee whether the employer intends to accept or deny the claim or is unable to make such a determination because it lacks sufficient information from the employee. If the employer is unable to make such a

determination because it lacks sufficient information from the employee, the employer shall so state and identify the needed additional information. If the employer intends to deny the claim, it shall provide the reasons. **FAILED**

[HB 2513](#) **Workers' compensation; occupation disease presumptions; PTSD.** Establishes a presumption that if certain firefighters, law-enforcement officers, hazardous materials officers, animal protection police officers, or 9-1-1 emergency call takers, dispatchers, or similarly situated employees (i) receive a diagnosis of post-traumatic stress disorder (PTSD) from a licensed physician, licensed clinical psychologist, licensed professional counselor, or licensed clinical social worker; (ii) suffer death or any impairment resulting in total or partial disability from work caused by the PTSD; and (iii) receive a statement from such a provider that the PTSD was caused by a single critical event or multiple exposures to critical events that occurred in the course of the employment, then the PTSD is an occupational disease, suffered in the line of duty, that is covered by the Virginia Workers' Compensation Act unless such presumption is overcome by a preponderance of competent evidence to the contrary. The measure provides that a "critical event" includes an event that results in serious injury or death to an individual; deals with a minor who has been injured, killed, abused, exploited, or a victim of a crime; deals with mass casualties; results in injury to or the death of a coworker; involves an immediate threat to the life of the claimant or another individual; or involves the abuse, cruelty, injury, exploitation, or death of an animal. **FAILED**

CRIMINAL LAW

– PASSED –

[HB 1664](#) **Out-of-state conviction of drug offenses; restricted driver's license.** Provides that a person convicted of a drug offense in another state may petition the general district court of the county or city in which he resides for a restricted driver's license allowing the petitioner to operate a motor vehicle in the Commonwealth on a restricted basis, provided that no such restricted license shall permit the petitioner to operate a commercial vehicle. This bill is identical to [SB 1181](#). **PASSED**

[HB 1671](#) **Child abuse and neglect; investigations by local boards of social services.** Requires local boards of social services, when investigating an individual who is the subject of child abuse or neglect allegations or the subject of a family assessment, to determine whether such individual has resided in another state within at least the preceding five years and, if he has resided in another state, to request a search of the child abuse and neglect registry or equivalent registry maintained by such state. **PASSED**

[HB 1751](#) **Forgery; venue.** Provides that, in addition to the current forgery venue provisions, forgery may be prosecuted in any county or city where an issuer, acquirer, or account holder sustained a financial loss as a result of the offense. This bill is identical to [SB 1050](#). **PASSED**

[HB 1833](#) **Investigations and reports by probation officers; persons eligible for parole.** Allows a presentence report to be made available for review without a court order to incarcerated persons who are eligible for release by the Virginia Parole Board, or to such person's counsel. **PASSED**

[SB 1031](#) **False information and hoax criminal activities; penalty.** Makes it a Class 1 misdemeanor for any person to knowingly, with the intent to mislead a law-enforcement agency, cause another to give a false report to any law-enforcement official by publicly simulating a violation of Chapter 4 (§ 18.2-30 et seq.) (Crimes Against the Person) or Chapter 5 (§ 18.2-77 et seq.) (Crimes Against Property) of Title 18.2. This bill is identical to [HB 2056](#). **PASSED**

[SB 1069](#) **Habeas corpus.** Reorganizes, updates outdated language, and removes unused provisions in several writ of habeas corpus statutes. The bill clarifies certain procedural issues such as service, venue, amendments for failure to name a proper party respondent, necessity of a response, and transfer for evidentiary hearings. This bill is a recommendation of the Judicial Council. This bill is identical to [HB 1909](#). **PASSED**

[SB 1150](#) **Issuance of warrants by magistrates.** Provides that a magistrate may not issue an arrest warrant for a misdemeanor offense where the accused is a law-enforcement officer and the alleged offense arises out of the performance of his public duties upon the basis of a complaint by a person other than a law-enforcement officer or an animal control officer without prior authorization by the attorney for the Commonwealth or by a law-enforcement agency. **PASSED**

[SB 1166](#) **Clerks of court; collection of DNA sample for certain offenses; disclosure of tax information; Torrens system.** Provides that a blood, saliva, or tissue sample shall be taken for any person convicted of a local ordinance that is similar to a misdemeanor for which a blood, saliva, or tissue sample is currently required to be taken. The bill also states that the prohibition for certain state and local officials from divulging tax information is not applicable

to the disclosure of information contained in an estate's probate tax return to a commissioner of accounts making a settlement of accounts filed in such estate. Finally, the bill repeals the provision of law establishing the Torrens system, which provided for the settlement, registration, transfer, and assurance of titles to land and established courts of land registration.

PASSED

[HB 1909](#) **Habeas corpus.** Reorganizes, updates outdated language, and removes unused provisions in several writ of habeas corpus statutes. The bill clarifies certain procedural issues such as service, venue, amendments for failure to name a proper party respondent, necessity of a response, and transfer for evidentiary hearings. This bill is a recommendation of the Judicial Council. This bill is identical to [SB 1069](#). **PASSED**

[HB 1911](#) **Duties of drivers of vehicles approaching stationary vehicles displaying certain warning lights; penalty.** Makes a driver's failure to move into a nonadjacent lane on a highway with at least four lanes when approaching a stationary vehicle displaying flashing, blinking, or alternating blue, red, or amber lights, or, if changing lanes would be unreasonable or unsafe, to proceed with due caution and maintain a safe speed, reckless driving, which is punishable as a Class 1 misdemeanor. Under current law, a first such offense is a traffic infraction punishable by a fine of not more than \$250, and a second such offense is punishable as a Class 1 misdemeanor. **PASSED**

[HB 1922](#) **Summons for unlawful detainer; initial hearing; subsequent filings; termination notice.** Provides that if an initial hearing on a summons for unlawful detainer cannot be held within 21 days from the date of filing, it shall be held as soon as practicable, but not later than 30 days after the date of the filing. The bill further provides that an order of possession for

the premises in an unlawful detainer action shall not be entered unless the plaintiff or the plaintiff's attorney or agent has presented a copy of a proper termination notice that the court admits into evidence. The bill allows a plaintiff to amend the amount alleged to be due and owing in an unlawful detainer action to request all amounts due and owing as of the date of a hearing on the action and to further amend such an amount to include additional amounts that become due and owing prior to the final disposition of a pending unlawful detainer action. The bill prohibits a plaintiff from filing a subsequent and additional unlawful detainer summons for such additional amounts and is identical to [SB 1627](#). **PASSED**

[HB 1933](#) **Medical and mental health treatment of prisoners incapable of giving consent.** Establishes a process for the sheriff or administrator in charge of a local or regional correctional facility to petition a court to authorize medical or mental health treatment for a prisoner in such facility who is incapable of giving informed consent for such treatment. The process parallels the existing process for the Director of the Department of Corrections to seek authorization to provide involuntary treatment to prisoners in state correctional facilities. The bill requires the court to authorize such treatment in a facility designated by the sheriff or administrator upon finding that the prisoner is incapable, either mentally or physically, of giving informed consent; that the prisoner does not have a relevant advanced directive, guardian, or other substitute decision maker; that the proposed treatment is in the best interests of the prisoner; and that the jail has sufficient medical and nursing resources available to safely administer the treatment and respond to any adverse side effects that might arise from the treatment. The bill provides that the treatment ordered may be provided within a local or regional correctional facility if such facility is licensed to provide such treatment. If statutory procedures are followed, the service

provider does not have liability based on lack of consent or lack of capacity to consent unless there is injury or death resulting from gross negligence or willful and wanton misconduct. **PASSED**

[HB 1940](#) Child Pornography Registry; contents of Registry; criminal investigations; report. Requires copies of all known or suspected child pornography found during the course of a criminal investigation of child pornography offenses to be included in the Child Pornography Registry (the Registry). **PASSED**

[HB 1941](#) Maiming, etc., of another; driving while intoxicated; operating watercraft while intoxicated; penalties.Increases from a Class 6 felony to a Class 4 felony the punishment for a person who, as a result of driving while intoxicated or operating a watercraft or motorboat while intoxicated in a manner so gross, wanton, and culpable as to show reckless disregard for human life, unintentionally causes the serious bodily injury, as defined in the bill, of another person resulting in permanent and significant physical impairment. The bill creates a Class 6 felony for such driving or operation that unintentionally causes the serious bodily injury, as defined in the bill, of another person. **PASSED**

[HB 1953](#) Appeals from founded complaints of child abuse or neglect; concurrent criminal investigations. Provides that whenever an appeal of a finding by a local department of social services is made and a criminal investigation is also commenced against the appellant for the same conduct involving the same victim as investigated by the local department, the appeal process shall automatically be stayed until the criminal investigation is closed or, in the case of a criminal investigation that is not completed within 180 days of the appellant's request for

an appeal, for 180 days. This bill is identical to [SB 1416](#). **PASSED**

[HB 1998](#) Exposure to bodily fluids; infection with human immunodeficiency virus or hepatitis B or C viruses; expedited testing. Requires a general district court to hold a hearing within 48 hours of a petition being filed seeking to compel collection of a blood specimen for testing for human immunodeficiency virus or the hepatitis B or C viruses when exposure to bodily fluids occurs between a person and any health care provider, person employed by or under the direction and control of a health care provider, law-enforcement officer, firefighter, emergency medical services personnel, person employed by a public safety agency, or school board employee and the person whose blood specimen is sought refuses to consent to providing such specimen. **PASSED**

[SB 1150](#) Issuance of warrants by magistrates. Provides that a magistrate may not issue an arrest warrant for a misdemeanor offense where the accused is a law-enforcement officer and the alleged offense arises out of the performance of his public duties upon the basis of a complaint by a person other than a law-enforcement officer or an animal control officer without prior authorization by the attorney for the Commonwealth or by a law-enforcement agency. **PASSED**

[SB 1231](#) Incompetent defendants; capital murder. Provides that when a defendant charged with capital murder is determined to be unrestorably incompetent, the court may order that the defendant receive continued treatment to restore competency provided that hearings be held at yearly intervals for five years and at biennial intervals thereafter, or at any time that the director of the treating facility or his designee submits a competency report to

the court that the defendant's competency has been restored. **PASSED**

[SB 1257](#) Child abuse and neglect; mandatory reporters. Adds to the list of persons who are required to report suspected child abuse or neglect ministers, priests, rabbis, imams, and duly accredited practitioners of any religious organization or denomination usually referred to as a church; however, the bill exempts such clergy members from the mandatory reporting requirement when the information supporting the suspicion of child abuse or neglect (i) is required by the doctrine of the religious organization or denomination to be kept confidential or (ii) would be subject to the exemptions set forth in § 8.01-400 or 19.2-271.3 if offered as evidence in court. This bill is identical to [HB 1659](#). **PASSED**

[HB 2042](#) Assault and battery against a family or household member; prior conviction; mandatory minimum term of confinement. Provides that upon a conviction for assault and battery against a family or household member where it is alleged in the warrant, petition, information, or indictment on which a person is convicted that such person has been previously convicted of an offense that occurred within a period of 10 years of the instant offense against a family or household member of (i) assault and battery against a family or household member, (ii) malicious wounding or unlawful wounding, (iii) aggravated malicious wounding, (iv) malicious bodily injury by means of a substance, (v) strangulation, or (vi) an offense under the law of any other jurisdiction that has the same elements of any of the above offenses such person is guilty of a Class 1 misdemeanor and the sentence of such person shall include a mandatory minimum term of confinement of 60 days. **PASSED**

[HB 2056](#) False information and hoax criminal activities; penalty. Makes it a Class 1

misdemeanor for any person to knowingly, with the intent to mislead a law-enforcement agency, cause another to give a false report to any law-enforcement official by publicly simulating a violation of Chapter 4 (§ 18.2-30 et seq.) (Crimes Against the Person) or Chapter 5 (§ 18.2-77 et seq.) (Crimes Against Property) of Title 18.2. This bill is identical to [SB 1031](#). **PASSED**

[HB 2080](#) Physical evidence recovery kit tracking system. Provides that the Department of Forensic Science (Department) shall maintain a statewide electronic tracking system for physical evidence recovery kits where such kits will be assigned a unique identification number to track each kit from its distribution as an uncollected kit to the health care provider through to its destruction. The bill provides that the Department shall provide access to the tracking system to health care providers, law-enforcement agencies, the Division of Consolidated Laboratory Services, and the Office of the Chief Medical Examiner. The bill also provides that a health care provider shall inform the victim of sexual assault of the unique identification number assigned to the physical evidence recovery kit utilized by the health care provider during the forensic medical examination and provide the victim with information regarding the physical evidence recovery kit tracking system **PASSED**

[HB 2278](#) Expungement of police and court records; absolute pardon. Provides for the automatic expungement of the police and court records relating to a person's conviction if he has been granted an absolute pardon for a crime that he did not commit. **PASSED**

[HB 2320](#) Resetting bail, bond, and recognizance determinations; jurisdiction. Provides that any motion to alter the terms and conditions of bail where the initial bail decision is made by a judge or clerk of a district court or by a magistrate on any charge

originally pending in that district court shall be filed in that district court unless (i) a bail decision is on appeal, (ii) such charge has been transferred to a circuit court, or (iii) such charge has been certified by a district court. The bill also provides that a bail decision of a higher court from an appeal of a lower court's bail decision shall be remanded to the lower court in which the case is pending for enforcement and modification of bail. As introduced, this bill was a recommendation of the Virginia Criminal Justice Conference. **PASSED**

[HB 2413](#) Multi-jurisdiction grand jury; secrecy of information. Provides that any person granted permission to make notes and to duplicate portions of the evidence given before the multi-jurisdiction grand jury shall maintain the secrecy of all information obtained from a review or duplication of the evidence presented to the multi-jurisdiction grand jury, except for disclosure as he deems necessary for use in a criminal investigation or proceeding. The bill also provides that after a person has been indicted by a grand jury, the attorney for the Commonwealth shall notify such person that the multi-jurisdiction grand jury was used to obtain evidence for a prosecution. As introduced, the bill was a recommendation of the Virginia Criminal Justice Conference. **PASSED**

[HB 2414](#) Transfer of venue; delinquency; adjudication. Provides that a transfer of venue in delinquency proceedings, which under current law may occur only after adjudication, may occur when such adjudication consists of a finding of facts sufficient to justify a finding of delinquency. This bill is a recommendation of the Committee on District Courts. This bill is identical to [SB 1201](#). **PASSED**

[SB 1349](#) Safe reporting of overdoses. Eliminates the requirement to substantially cooperate with law enforcement in any investigation of any criminal offense reasonably related to an

overdose in order to qualify for an affirmative defense from prosecution for the unlawful purchase, possession, or consumption of alcohol, possession of a controlled substance, possession of marijuana, intoxication in public, or possession of controlled paraphernalia. **PASSED**

[SB 1381](#) Student offenses reportable by intake officers to school division superintendents. Adds (i) threats of death or bodily injury to another person communicated in writing to such person or member of such person's family and (ii) threats to commit serious bodily harm to persons on school property to the list of offenses that a juvenile intake officer is required to report to the school division superintendent when a petition is filed alleging that a juvenile student committed such an offense. This bill is identical to [HB 1787](#). **PASSED**

[SB 1395](#) Threats of death or bodily injury to a health care provider. Provides that any person who orally makes a threat to kill or to do bodily injury against any health care provider who is engaged in the performance of his duties in a hospital or in an emergency room on the premises of any clinic or other facility rendering emergency medical care is guilty of a Class 1 misdemeanor, unless the person is on the premises of the hospital or emergency room as a result of an emergency custody order, an involuntary temporary detention order, an involuntary hospitalization order, or an emergency custody order of a conditionally released acquittee. **PASSED**

[SB 1416](#) Appeals from founded complaints of child abuse or neglect; concurrent criminal investigations. Provides that whenever an appeal of a finding by a local department of social services is made and a criminal investigation is also commenced against the appellant for the same conduct involving the same victim as investigated by the local

department, the appeal process shall automatically be stayed until the criminal investigation is closed or, in the case of a criminal investigation that is not completed within 180 days of the appellant's request for an appeal, for 180 days. This bill is identical to [HB 1953](#). **PASSED**

[SB 1436](#) **Mandatory reporters of child abuse or neglect; prenatal substance exposure.** Requires any licensed hospital, whenever a health care provider in such hospital reports suspected child abuse or neglect resulting from prenatal substance exposure, to require the development of a written discharge plan that includes, among other things, appropriate treatment referrals and notice to the community services board of the jurisdiction in which the mother resides for the appointment of a discharge plan manager. The bill provides that such reports shall not constitute a per se finding of child abuse or neglect. **PASSED**

[HB 2528](#) **Felony homicide; certain drug offenses; penalty.** Provides that a person is guilty of felony homicide, which constitutes second degree murder and is punishable by confinement of not less than five nor more than 40 years, if the underlying felonious act that resulted in the killing of another involved the manufacture, sale, gift, or distribution of a Schedule I or II controlled substance to another and (i) such other person's death results from his use of the controlled substance and (ii) the controlled substance is the proximate cause of his death. The bill provides that venue for a prosecution of this crime shall lie in the locality where the underlying felony occurred, where the use of the controlled substance occurred, or where death occurred. **PASSED**

[HB 2586](#) **Prostitution and sex trafficking; offenses involving a minor; penalties.** Provides that any person who commits an act of aiding prostitution or illicit sexual intercourse or using a vehicle to promote prostitution or unlawful

sexual intercourse, when such act involves a minor, is guilty of a Class 6 felony. Under current law, such acts are punishable as a Class 1 misdemeanor. The bill adds the two new felony offenses to (i) the definition of "violent felony" for the purposes of sentencing guidelines, (ii) the definition of barrier crimes for the purposes of background checks for employees or volunteers providing care to children or the elderly or disabled, (iii) the definition of predicate criminal acts for street gangs, (iv) the definition of racketeering activity under the Virginia Racketeer Influence and Corrupt Organization Act, (v) the list of violations that a multi-jurisdiction grand jury is responsible for investigating, and (vi) the list of offenses requiring registration in the Sex Offender and Crimes Against Minors Registry. **PASSED**

[HB 2597](#) **Child abuse and neglect report or complaint; victims of sex trafficking; taking child victim into custody.** Requires a local department of social services to conduct a sex trafficking assessment upon receiving a complaint of suspected child abuse that is based upon information and allegations that a child is a victim of sex trafficking, provided that the local department has not determined that a separate investigation or family assessment is required. The bill also allows a child-protective services worker of a local department responding to such complaint to take the child victim into custody and allows the local department to maintain custody of the child for up to 72 hours without prior approval of a parent or guardian. As introduced, this bill was a recommendation of the Virginia State Crime Commission. This bill is identical to [SB 1661](#). **PASSED**

[HB 2615](#) **Capital murder; punishment.** Provides that any person convicted of capital murder who was 18 years of age or older at the time of the offense shall be sentenced to no less than a

mandatory minimum term of confinement for life. **PASSED**

[HB 2622](#) Removal of a child; names and contact information of persons with a legitimate interest. Provides that, in any proceeding in which a child is removed from his home, the court may order the parents or guardians of such child to provide the names and contact information for all persons with a legitimate interest to the local department of social services. **PASSED**

[SB 1501](#) Capital murder; law-enforcement officers and fire marshals; mandatory minimum. Provides that any person convicted of capital murder of a law-enforcement officer or certain other public safety officials who was 18 years of age or older at the time of the offense shall be sentenced to no less than a mandatory minimum term of confinement for life. **PASSED**

[SB 1507](#) Use of unmanned aircraft systems by law-enforcement officers; persons sought for arrest. Provides that a law-enforcement officer may deploy an unmanned aircraft system (i) to aerially survey a primary residence of the subject of the arrest warrant to formulate a plan to execute an existing arrest warrant or capias for a felony offense or (ii) to locate a person sought for arrest when such person has fled from a law-enforcement officer and a law-enforcement officer remains in hot pursuit of such person. **PASSED**

[SB 1540](#) Protective orders; contents of preliminary protective orders; docketing of appeal. Provides that if a preliminary protective order is issued in an ex parte hearing where the petition for the order is supported by sworn testimony and not an affidavit or a form completed by a law-enforcement officer that includes a statement of the grounds for the order, the court issuing the order shall state in the order the basis on which the order was

entered, including a summary of the allegations made and the court's findings. The bill also requires that an appeal of a permanent protective order be docketed within two business days of receipt of such appeal. Under current law, such appeals are to be given precedence on the docket of the court over other civil appeals but otherwise docketed and processed in the same manner as other civil cases. **PASSED**

[Unlawful detainer; appeal bond.](#) Provides that for an appeal in an unlawful detainer case, the defendant shall post an appeal bond into the general district court in the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due, as contracted for in the rental agreement, due as of the date the appeal is filed with the court. Once the appeal is perfected, the defendant shall pay the rental amount as contracted for to the plaintiff on or before the fifth day of each month. The bill provides that if such amount is not paid, the judge, upon motion of the plaintiff, shall enter judgment for the outstanding amounts due and an order of possession without further hearings. As introduced, this bill is a recommendation of the Virginia Housing Commission. **PASSED**

[HB 2678](#) Unlawful dissemination or sale of images of another person; penalty. Provides, for the purposes of the prohibition against the unlawful dissemination or sale of certain images of another person, that "another person" includes a person whose image was used in creating, adapting, or modifying a videographic or still image with the intent to depict an actual person and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic. This bill is identical to [SB 1736](#). **PASSED**

[SB 1736](#) Unlawful dissemination or sale of images of another person; penalty. Provides, for the purposes of the prohibition against the

unlawful dissemination or sale of certain images of another person, that "another person" includes a person whose image was used in creating, adapting, or modifying a videographic or still image with the intent to depict an actual person and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic. This bill is identical to [HB 2678](#). **PASSED**

CRIMINAL LAW

— **FAILED** —

[HB 1665](#) **Court-established community service programs; community service work in lieu of payment of fine or costs.** Requires courts to provide an option to any person upon whom a fine and costs have been imposed to discharge all or part of the fine or costs by earning credits for the performance of community service work before or after imprisonment. **FAILED**

[HB 1716](#) **Criminal sexual assault; definition of sexual abuse; complaining witness under age 13.** Includes in the definition of "sexual abuse" the intentional touching of any part of a complaining witness's body, either on the skin or the material covering the complaining witness's body, if the complaining witness is under the age of 13 and the act is committed with the intent to sexually molest, arouse, or gratify any person **FAILED**

[HB 1745](#) **Juvenile offenders; parole.** Provides that any person sentenced to a term of life imprisonment for a single felony offense or multiple felony offenses committed while that person was a juvenile and who has served at least 25 years of such sentence, and any person who has active sentences that total more than 25 years for a single felony offense or multiple felony offenses committed while that person was a juvenile and who has served at least 25 years of such sentences, shall be eligible for parole. **FAILED**

[HB 1775](#) **Protective services for adults by local departments of social services; multidisciplinary teams.** Allows local departments of social services to foster, when practicable, the creation, maintenance, and coordination of hospital and community-based multidisciplinary teams to assist the local departments in identifying abused and exploited adults. The bill also provides that such multidisciplinary teams may develop agreements regarding the exchange of information among the parties for the purposes of the investigation and disposition of complaints of adult abuse and exploitation, delivery of services, and protection for abused or exploited adults. This bill is a recommendation of the Virginia Criminal Justice Conference. **FAILED**

[HB 1797](#) **Places of confinement for juveniles; separation of juveniles from adult offenders.** Provides that when juveniles who are determined by the court to be a threat to the security or safety of other juveniles detained in a juvenile secure facility are transferred to or confined to a jail or other facility for the detention of adults, such adult-detention facility must have the capacity and availability to detain juveniles in accordance with applicable federal and state law. **FAILED**

[HB 1813](#) **Alcoholic beverage control; interdiction; possession or consumption of alcoholic beverages by interdicted persons; repeal.** Repeals provisions allowing for a court to enter an order of interdiction prohibiting the sale of alcoholic beverages to any person who has (i) been convicted of driving any automobile, truck, motorcycle, engine, or train while intoxicated; (ii) shown himself to be a habitual drunkard; (iii) been found guilty of the illegal manufacture, possession, transportation, or sale of alcoholic beverages; or (iv) been found guilty of maintaining a common nuisance

[SB 997](#) Marijuana; decriminalization of simple marijuana possession; penalty. Decriminalizes simple marijuana possession and provides a civil penalty of no more than \$50 for a first violation, \$100 for a second violation, and \$250 for a third or subsequent violation. Current law imposes a maximum fine of \$500 and a maximum 30-day jail sentence for a first offense, and subsequent offenses are a Class 1 misdemeanor. **FAIL SENATE COURTS 6-9**

[SB 1033](#) Body-worn camera; release of recordings; penalty. Provides a procedure for a defendant to request the inspection and the copying or photographing of any body-worn camera recordings that are within the possession, custody, or control of the Commonwealth. **FAILED**

[SB 1037](#) Expungement of certain offenses. Allows a person to petition for expungement of a deferred disposition dismissal for underage alcohol possession or using a false ID to obtain alcohol when the offense occurred prior to the person's twenty-first birthday; all court costs, fines, and restitution have been paid; and the person seeking the expungement is at least 21 years of age and has no other alcohol-related convictions. **PASSED SENATE, FAIL HOUSE**

[SB 1053](#) Juvenile offenders; parole. Provides that any person sentenced to a term of life imprisonment for a single felony offense or multiple felony offenses committed while that person was a juvenile and who has served at least 25 years of such sentence, and any person who has active sentences that total more than 25 years for a single felony offense or multiple felony offenses committed while that person was a juvenile and who has served at least 25 years of such sentences, shall be eligible for parole. **FAIL SENATE COURTS, 7-7**

[SB 1066](#) Post-conviction relief; previously admitted scientific evidence. Provides that a

person who was convicted of certain offenses, upon a plea of not guilty or an Alford plea, or who was adjudicated delinquent, upon a plea of not guilty or an Alford plea, by a circuit court of an offense that would be a covered offense if committed by an adult may petition the Court of Appeals to have his conviction vacated. The petition shall allege (i) the covered offense for which the petitioner was convicted or adjudicated delinquent; (ii) that the petitioner did not commit the covered offense for which the petitioner was convicted or adjudicated delinquent, nor engage in conduct that would support a conviction for a lesser offense or any other crime arising from, or reasonably connected to, the facts supporting the indictment or information upon which he was convicted or adjudicated delinquent; (iii) an exact description of the forensic scientific evidence and its relevance in demonstrating that the petitioner did not commit the covered offense; (iv) specific facts indicating that relevant forensic scientific evidence was not available or could not have been obtained in the exercise of diligence before the expiration of 21 days following entry of the final order of conviction or adjudication of delinquency, or that discredited forensic scientific evidence was admitted at the petitioner's trial or adjudication of delinquency; and (v) that the admission of the discredited forensic scientific evidence or the absence of the newly available forensic scientific evidence was not harmless. **PASS SENATE, FAIL HOUSE**

[SB 1076](#) Admissibility of prior inconsistent statements in a criminal case. Provides that in all criminal cases, evidence of a prior statement that is inconsistent with testimony at the hearing or trial is admissible if the testifying witness is subject to cross-examination and the prior statement (i) was made by the witness under oath at a trial, hearing, or other proceeding or (ii) narrates, describes, or explains an event or condition of which the witness had personal knowledge and (a) the

statement is proved to have been written or signed by the witness; (b) the witness acknowledges, under oath, the making of the statement in his testimony at the hearing or trial in which the admission into evidence of the prior statement is being sought; or (c) the statement is proved to have been accurately recorded by use of an audio recorder, a video/audio recorder, or any other similar electronic means of sound recording. **FAILED**

SB 1092 Preliminary protective orders; hearing dates. Allows the full hearing resulting from the issuance of a preliminary protective order to be heard on the same hearing or trial date as a related criminal offense if such hearing or trial date has already been set for a date later than 15 days after the issuance of the preliminary protective order. **FAILED**

SB 1107 Disorderly conduct in public places; school activities. Eliminates the Class 1 misdemeanor for disrupting willfully or while intoxicated, whether willfully or not, the operation of any school or any school activity conducted or sponsored by any school, if the disruption (i) prevents or interferes with the orderly conduct of the operation or activity or (ii) has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed. **PASS SENATE, FAIL HOUSE**

SB 1137 Death penalty; severe mental illness. Provides that a defendant in a capital case who had a severe mental illness, as defined in the bill, at the time of the offense is not eligible for the death penalty. The bill establishes procedures for determining whether a defendant had a severe mental illness at the time of the offense and provides for the appointment of expert evaluators. The bill provides that when the defendant's severe mental illness is at issue, a determination will be made by the jury or by the judge in a bench trial as part of the sentencing proceeding, and

the defendant bears the burden of proving his severe mental illness by a preponderance of the evidence. **PASS SENATE, FAIL HOUSE**

HB 1888 Limitations period; sexual abuse. Eliminates the civil statute of limitations period for injury resulting from sexual abuse occurring during the infancy or incapacity of the abused person. **FAILED**

HB 1903 Dissemination of criminal history record information; limitations. Limits the criminal history information that the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, may provide to a requesting employer or prospective employer to convictions occurring within seven years prior to the request, except for any information related to a felony act of violence or a barrier crime. **FAILED**

HB 1976 State Police; reporting hate crimes. Includes within the definition of "hate crime" a criminal act committed against a person because of sexual orientation or gender identification and requires the reporting of the commission of such crime to the State Police. **FAILED**

HB 1991 Domestic terrorism offenses; penalty. Creates a new separate and distinct Class 5 felony for any person who actively participates in or is a member of a domestic terrorist organization, defined in the bill, and who knowingly and willfully participates in any act of domestic terrorism, also defined in the bill, committed for the benefit of, at the direction of, or in association with any domestic terrorist organization. **FAILED**

SB 1137 Death penalty; severe mental illness. Provides that a defendant in a capital case who had a severe mental illness, as defined in the bill, at the time of the offense is not eligible for the death penalty. The bill

establishes procedures for determining whether a defendant had a severe mental illness at the time of the offense and provides for the appointment of expert evaluators. **PASS SENATE 23-17, FAIL HOUSE COURTS**

SB 1263 Juveniles; trial as adult. Increases the minimum age that a juvenile can be tried as an adult in circuit court for a felony larceny offense from 14 years of age to 16 years of age. **PASS SENATE 33-7, FAIL HOUSE COURTS**

HB 2036 Prima facie evidence of intent to commit larceny by employed caregiver of an adult. Provides that in any prosecution of an employed caregiver of an adult for larceny, the pawning of property by such caregiver shall be prima facie evidence of intent to commit larceny of such property if (i) the property belongs to the adult the caregiver is employed to care for; (ii) the caregiver cares for such adult in the adult's home; (iii) the caregiver is not a family or household member of such adult; and (iv) the caregiver does not receive written authorization to take and pawn such property prior to pawning it. **FAILED**

HB 2119 School attendance officer; motion for a rule to show cause; child in need of supervision. Authorizes a school attendance officer or division superintendent or his designee acting as an attendance officer to complete, sign, and file with the clerk of court a motion for a rule to show cause regarding the violation or enforcement of a school attendance order entered by a juvenile and domestic relations district court in response to the filing of a petition alleging the juvenile is a child in need of supervision. The bill also provides that such a filing is not considered the unauthorized practice of law. **PASS HOUSE, FAIL SENATE**

HB 2136 Evidence; accident reconstruction; criminal cases. Provides that in any criminal case, an accident reconstruction expert, when properly qualified, may testify as an expert

witness in a court of law subject to the Rules of Supreme Court. **PASS HOUSE, FAIL SENATE**

HB 2199 Preliminary removal order; preliminary protective order for a child; hearing; evidence. Provides that, in a hearing on a preliminary removal order or preliminary protective order for a child, all relevant and material evidence helpful in determining whether such order may be issued by the court may be admitted by the court even though such evidence may not be competent in a final dispositional hearing. **FAILED**

HB 2227 Multi-jurisdiction grand jury; hate crimes. Adds the following to the list of crimes that a multi-jurisdiction grand jury may investigate: (i) simple assault or assault and battery where the victim was intentionally selected because of his race, religious conviction, color, or national origin; (ii) entering the property of another for purposes of damaging such property or its contents or interfering with the rights of the owner, user, or occupant where such property was intentionally selected because of the race, religious conviction, color, or national origin of the owner, user, or occupant; and (iii) various offenses that tend to cause violence. **FAILED**

HB 2235 Protective orders; issuance upon convictions for certain felonies; penalty. Authorizes a court to issue a protective order upon convicting a defendant for a felony offense of (i) violating a protective order, (ii) homicide, (iii) kidnapping, (iv) assaults and bodily woundings, (v) extortion, or (vi) criminal sexual assault. The bill provides that the duration of such protective order can be for any period of time, including up to the lifetime of the defendant, that the court deems necessary to protect the health and safety of the victim and may only prohibit (a) acts of family abuse or of violence, force, or threat against the victim or criminal offenses that may result in injury to the person or property of the victim and (b) such

contacts by the defendant with the victim as the court deems necessary for the health or safety of the victim. **FAILED**

[HB 2277](#) Driver's license suspensions for certain non-driving related offenses. Removes the existing provisions that allow a person's driver's license to be suspended (i) when he is convicted of or placed on deferred disposition for a drug offense and (ii) for violations not pertaining to the operator or operation of a motor vehicle. **FAILED**

[HB 2283](#) Juvenile court; appointment of counsel; waiver. Prohibits any child age 15 and younger who is alleged to be in need of services, in need of supervision, or delinquent from waiving his right to an attorney. The bill also requires any child who is age 16 or older and is alleged to be in need of services, in need of supervision, or delinquent to consult with an attorney before such child may waive his right to an attorney. Additionally, a court must determine that such waiver is free and voluntary. **FAILED**

[HB 2370](#) Possession and consumption of marijuana; penalty. Decriminalizes simple marijuana possession and provides a civil penalty of no more than \$250. **FAILED**

[HB 2417](#) Emergency protective order; required conditions; petition to dissolve or modify. Requires any emergency protective order to prohibit (i) the respondent from committing acts of family abuse or criminal offenses that result in injury to person or property and (ii) such contacts by the respondent with the allegedly abused person or family or household members of the allegedly abused person, including prohibiting the respondent from being in the physical presence of the allegedly abused person or family or household members of the allegedly abused person, as the judge or magistrate deems

necessary to protect the safety of such persons. **PASS HOUSE, FAIL SENATE**

[HB 2439](#) DNA analysis; conviction of certain crimes or similar ordinance of a locality. Adds persons convicted of local ordinances that are similar to certain crimes listed under current law to the list of persons from whom a blood, saliva, or tissue sample shall be taken for DNA analysis to determine identification characteristics specific to the person. **FAILED**

[SB 1375](#) Hate crimes; gender, disability, gender identity, or sexual orientation; penalty. Adds gender, disability, gender identity, and sexual orientation to the categories of victims whose intentional selection for a hate crime involving assault, assault and battery, or trespass for the purpose of damaging another's property results in a higher criminal penalty for the offense. The bill also adds gender, disability, gender identity, and sexual orientation to the categories of hate crimes that are to be reported to the central repository of information regarding hate crimes maintained by the Virginia State Police and provides that a person who is subjected to acts of intimidation or harassment, violence directed against his person, or vandalism to his real or personal property, where such acts are motivated by gender, disability, gender identity, and sexual orientation, may bring a civil action to recover his damages. **FAIL SENATE COURTS, 6-8**

[SB 1380](#) Expungement of certain charges and convictions. Allows a person to petition for expungement of convictions and deferred disposition dismissals for marijuana possession, underage alcohol possession, and using a false ID to obtain alcohol when the offense occurred prior to the person's twenty-first birthday; all court costs, fines, and restitution have been paid; and five years have elapsed since the date of completion of all terms of sentencing and probation. **PASS SENATE, FAIL HOUSE**

[SB 1417](#) **Competency report; unrestorably incompetent defendant.** Provides that in cases where a defendant's competency is primarily compromised due to an ongoing and irreversible medical condition and prior medical or educational records are available to support the diagnosis, a competency report may recommend that the court find the defendant unrestorably incompetent to stand trial, and the court may proceed with the disposition of the case based on such recommendation. **PASS SENATE, FAIL HOUSE**

[SB 1437](#) **Parole; exception to limitation on the application of parole statutes; investigations and reports by probation officers.** Provides that a person is entitled to parole who was sentenced by a jury prior to the date of the Supreme Court of Virginia decision in *Fishback v. Commonwealth*, 260 Va. 104 (June 9, 2000), in which the Court held that a jury should be instructed on the fact that parole has been abolished, for a noncapital felony committed after the time that the abolition of parole went into effect (January 1, 1995). The bill also allows a presentence report to be made available for review without a court order to incarcerated persons who are eligible for release by the Virginia Parole Board, or to such person's counsel. **FAIL SENATE COURTS, 7-8**

[HB 2525](#) **Misdemeanor sexual offenses where the victim is a minor; statute of limitations.** Increases the statute of limitations for prosecuting misdemeanor violations where the victim is a minor from one year after the victim reaches the age of majority to five years after the victim reaches the age of majority for the following misdemeanor violations: carnal knowledge of offender by employee of bail bond company, sexual battery, attempted sexual battery, infected sexual battery, sexual abuse of a child age 13 or 14 by an adult, and tongue penetration by adult of mouth of child under age 13 with lascivious intent. **FAILED**

[HB 2552](#) **Unmanned aircraft systems; delayed notice of search warrant when deployed.** Provides that within 10 days after an unmanned aircraft system is used during the execution of a search warrant, a copy of the executed search warrant shall be served on the person who was the subject of the search warrant and the person whose property was the subject of the search warrant. The bill provides that upon request, and for good cause shown, the circuit court may grant one or more extensions for such service for a period not to exceed 30 days each. **PASS HOUSE, FAIL SENATE**

[HB 2582](#) **Violation of provisions of protective orders; entering the lands, buildings, or premises owned or leased by protected party prohibited; penalties.** Provides that any person subject to a protective order who enters any land, buildings, or premises, when such entrance is prohibited by a provision of the protective order, while the protected party is present, or enters and remains in or on such land, buildings, or premises until the protected party arrives, is guilty of a Class 6 felony. **FAILED**

[SB 1578](#) **Reckless driving; exceeding speed limit.** Raises from 80 to 85 miles per hour the speed above which a person who drives a motor vehicle on the highways in the Commonwealth is guilty of reckless driving regardless of the applicable maximum speed limit. **PASS SENATE, FAIL HOUSE**

[SB 1613](#) **Driver's license suspensions for certain non-driving related offenses.** Removes the existing provisions that allow a person's driver's license to be suspended (i) when he is convicted of or placed on deferred disposition for a drug offense and (ii) for violations not pertaining to the operator or operation of a motor vehicle. The provisions of the bill are contingent upon funding in a general appropriation act. **PASS SENATE, FAIL HOUSE COURTS**

[SB 1620](#) Violation of provisions of protective orders; entering the lands, buildings, or premises owned or leased by protected party prohibited; penalties. Provides that any person subject to a protective order who enters the lands, buildings, or premises owned or leased by a protected party while the protected party is present, or enters and remains in or on the lands, buildings, or premises owned or leased by the protected party until the party arrives, is guilty of a Class 6 felony. **FAILED**

[SB 1621](#) Assault and battery against a family or household member; enhanced penalty. Reduces from two prior convictions to one prior conviction the required number of prior convictions of assault and battery against a family or household member before the Class 6 felony applies. **FAILED**

[SB 1710](#) Community work in lieu of payment of fines and court costs; authority of the court. Clarifies that a court shall oversee a program allowing community service in lieu of payment of fines and court costs, including the monitoring of credit earned toward the discharge of such fine or costs for a period of up to 10 years. **PASS SENATE, FAIL HOUSE**

[HB 2794](#) Refusal of tests; restricted license. Allows a person convicted of a first offense of unreasonable refusal to have samples of his breath taken for chemical tests to determine the alcohol content of his blood to petition the court 30 days after conviction for a restricted driver's license. The court may, for good cause shown, grant such restricted license for the same purposes as allowed for restricted licenses granted after conviction of driving under the influence, if the person installs an ignition interlock system on each motor vehicle owned by or registered to the person and enters into and successfully completes an alcohol safety action program. **FAILED**

FAMILY LAW

– PASSED –

[HB 1622](#) Out-of-court and recorded statements made by a child; abuse or neglect of a child. Provides that, in any civil proceeding involving the alleged abuse or neglect of a child, an out-of-court statement made by a child 14 years of age or younger at the time the statement is offered into evidence describing sexual acts with or on the child by another may be admissible. The bill further provides that in any such civil proceeding, a recorded statement of the alleged victim of the abuse or neglect, made prior to the proceeding, may be admissible if the alleged victim is 14 years of age or younger at the time the statement is offered into evidence. **PASSED**

[HB 1659](#) Child abuse and neglect; mandatory reporters. Adds to the list of persons who are required to report suspected child abuse or neglect ministers, priests, rabbis, imams, and duly accredited practitioners of any religious organization or denomination usually referred to as a church; however, the bill exempts such clergy members from the mandatory reporting requirement when the information supporting the suspicion of child abuse or neglect (i) is required by the doctrine of the religious organization or denomination to be kept confidential or (ii) would be subject to the exemptions set forth in § 8.01-400 or 19.2-271.3 if offered as evidence in court. This bill is identical to [SB 1257](#). **PASSED**

[HB 1728](#) Post-adoption contact and communication agreements. Provides that a local board of social services or child welfare agency required to file a petition for a permanency planning hearing may inform the birth parents and shall inform the adoptive parents that they may enter into enter into a post-adoption contact and communication agreement. The bill further provides that such

local board of social services or child welfare agency shall inform the child if he is 14 years of age or older that he may consent to such an agreement. This bill is identical to [SB 1139](#). **PASSED**

[HB 1730](#) Foster care; security freeze on credit report. Requires local departments of social services to request the placement of a security freeze on the credit report or record of any child who has been in foster care for at least six months in order to prevent cases of identity theft and misuse of personal identifying information. The bill directs a local department to request the removal of such security freezes (i) upon the child's removal from foster care, (ii) upon the child's request if the child is at least 16 years of age, or (iii) upon a determination that doing so would be in the best interest of the child. The bill requires the local department to conduct annual credit checks on all such children between the ages of 14 and 18. This bill is identical to [SB 1253](#). **PASSED**

[HB 1819](#) Child support enforcement; fees. Raises from \$25 to \$35 the fee charged by the State Board of Social Services to individuals who authorize the Department of Social Services to enforce child support obligations but who have never received assistance pursuant to the Temporary Assistance for Needy Families program. The bill provides that such fee shall be collected and retained from the amount of child support collected annually in excess of \$550. **PASSED**

[SB 1139](#) Post-adoption contact and communication agreements. Provides that a local board of social services or child welfare agency required to file a petition for a permanency planning hearing may inform the birth parents and shall inform the adoptive parents that they may enter into enter into a post-adoption contact and communication agreement. The bill further provides that such local board of social services or child welfare

agency shall inform the child if he is 14 years of age or older that he may consent to such an agreement. This bill is identical to [HB 1728](#).

PASSED

[SB 1144](#) **Guardianship; annual report.** Provides that, upon receiving notice from the local department of social services that a guardian has not filed the required annual report within the prescribed time limit, the court may issue a summons or rule to show cause why the guardian has failed to file such report. **PASSED**

[HB 1945](#) **No-fault divorce; waiver of service.** Clarifies that in the case of a no-fault divorce, waivers of service of process may occur within a reasonable time prior to or after the suit is filed, provided that a copy of the complaint is attached to such waiver, or otherwise provided to the defendant, and the final decree of divorce as proposed by the complainant is signed by the defendant. Where a defendant has waived service of process and, where applicable, notice, the bill further permits depositions to be taken, affidavits to be given, and all papers related to the divorce proceeding to be filed contemporaneously. This bill is identical to [SB 1541](#). **PASSED**

[HB 1988](#) **Military retirement benefits; marital share.** Requires that the determination of military retirement benefits in a divorce be made in accordance with the federal Uniformed Services Former Spouses' Protection Act (10 U.S.C. 1408 et seq.). **PASSED**

[HB 2059](#) **Nonpayment of child support; amount of arrearage paid; time period to pay arrearage; repayment schedule; suspension of driver's license.** Provides that an individual who is delinquent in child support payments or has failed to comply with a subpoena, summons, or warrant relating to paternity or child support proceedings is entitled to a judicial hearing if he makes a written request within 30 days from service of a notice of intent to suspend or

renew his driver's license. The bill further allows the Department of Motor Vehicles to renew a driver's license or terminate a license suspension imposed on an individual if such individual has reached an agreement with the Department of Social Services to satisfy the child support payment delinquency within a 10-year period and has made at least one payment of at least five percent of the total delinquency or \$600, whichever is less, as opposed to whichever is greater under current law, under such agreement. The bill further provides that, where such a repayment agreement has been entered into and such an individual has failed to comply with such agreement, the Department of Motor Vehicles shall suspend or refuse to renew such individual's driver's license until it has received certification from the Department of Social Services that such individual has entered into a subsequent agreement to pay within a period of seven years and has paid the lesser amount, as opposed to greater amount under current law, of at least one payment of \$1,200 or seven percent, as opposed to five percent under current law, of the current delinquency. The bill provides that an individual who fails to comply with such a subsequent agreement may enter into a new agreement if such individual has made a payment in the lesser amount, as opposed to the greater amount under current law, of \$1,800 or 10 percent, as opposed to five percent under current law, and agrees to a repayment schedule of not more than seven years, which is consistent with the timeframe provided by the current law. This bill is identical to [SB 1667](#). **PASSED**

[HB 2108](#) **Foster care agreements; rights of foster parent; dispute resolution.** Directs the Department of Social Services to promulgate emergency regulations to ensure collaboration, communication, access, and transparency between the local boards and licensed child-placing agencies and foster parents. The bill also directs local boards of social services and

licensed child-placing agencies to implement and publicize a dispute resolution process through which a foster parent may contest an alleged violation of such regulations by the local board or licensed child-placing agency. **PASSED**

HB 2208 Adoption by relative. Expands the applicability of adoption procedures for a child's close relatives to all of the child's adult relatives, including stepparents, stepbrothers or stepsisters, and all other adult relatives of the child by marriage or adoption. **PASSED**

SB 1339 Foster care omnibus. Makes numerous changes to the laws governing the provision of foster care services in the Commonwealth. Among other things, the bill (i) allows the Commissioner of Social Services to develop and implement a corrective action plan for or assume temporary control over the foster care services of a local board of social services upon determining that the local board (a) has failed to provide foster care services or make placement and removal decisions in accordance with applicable laws or regulations or (b) has taken any action that poses a substantial risk to the health, safety, or well-being of any child under its supervision and control; (ii) requires the Commissioner to create within the State Department of Social Services (the Department) a foster care health and safety director position; (iii) directs the Commissioner to establish and maintain a confidential hotline to receive reports and complaints from foster parents and other persons regarding violations of laws or regulations applicable to foster care and any other matters related to the health, safety, or well-being of children in foster care; (iv) directs the Department to develop and implement a more reliable, structured, and comprehensive case review and quality improvement process to monitor and improve foster care services provided by local boards and departments of social services; and (v) requires the Department to establish and update annually a caseload standard that limits the number of foster care

cases that may be assigned to each foster care caseworker. **PASSED**

HB 2234 Parental leave. Codifies the policy described in Executive Order Number 12 (2018) providing parental leave to state employees, consisting of eight weeks (320 hours) of paid leave in addition to leave provided under other state and federal programs. The bill requires that parental leave be available following the birth or adoption of a child under age 18 and be available to both parents of such child if both are state employees. The bill requires that parental leave be taken within six months of a birth or adoption and limits parental leave to once in any 12-month period and only once per child. This bill is identical to [SB 1581](#). **PASSED**

HB 2317 Custody and visitation orders; exchange of child. Provides that in custody and visitation cases, at the request of either party, the court may order that the exchange of a child take place at an appropriate meeting place. **PASSED**

SB 1429 Medical evidence admissible in juvenile and domestic relations district court; preliminary protective order hearings. Adds preliminary protective order hearings to the list of hearings where 24-hour written notice of intention to present medical evidence is required to present a medical report as evidence in a juvenile and domestic relations district court. Under current law, notice of 24 hours is permitted only in preliminary removal hearings or in preliminary protective orders in cases of family abuse. **PASSED**

SB 1435 Child welfare agencies and assisted living facilities; summary suspension. Allows the Commissioner of Social Services to issue an order of summary suspension of the license of any child welfare agency when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the children receiving care. The bill

allows the Commissioner, in issuing an order of summary suspension, to suspend the license of the child welfare agency or to suspend only certain authority of the child welfare agency to operate, including the authority to provide certain services or perform certain functions that the Commissioner determines should be restricted or modified in order to protect the health, safety, or welfare of the children receiving care. The bill establishes notice, hearing, appeal, and posting requirements for such summary suspensions. The bill also amends the summary suspension procedures for licensed assisted living facilities to align such procedures with the summary suspension procedures established in the bill for child welfare agencies. **PASSED**

[HB 2542](#) Temporary delegation of parental or legal custodial powers; child-placing agency. Allows a parent or legal custodian of a minor to delegate to another person by a properly executed power of attorney any powers regarding care, custody, or property of the minor for a period not exceeding 180 days. The bill provides that a parent or legal custodian who is a service member, as defined in the bill, may delegate such powers for a period of longer than 180 days while on active duty service, but specifies that such a period is not to exceed such active duty service plus 30 days. The bill provides that any such power of attorney shall be signed by all persons with authority to make decisions concerning the child, the person to whom powers are delegated under the power of attorney, and a representative of a licensed child-placing agency that assists parents and legal guardians with the process of delegating parental and legal custodial powers of their children. The bill specifies that such licensed child-placing agency will be subject to background checks and must develop and implement written policies for certain services and provide staff and provider training. The bill further requires that any person to whom any such powers are delegated

shall comply with background check requirements established by regulations of the Board of Social Services or otherwise provided by law. **PASSED**

[SB 1541](#) No-fault divorce; waiver of service. Clarifies that in the case of a no-fault divorce, waivers of service of process may occur within a reasonable time prior to or after the suit is filed, provided that a copy of the complaint is attached to such waiver, or otherwise provided to the defendant, and the final decree of divorce as proposed by the complainant is signed by the defendant. Where a defendant has waived service of process and, where applicable, notice, the bill further permits depositions to be taken, affidavits to be given, and all papers related to the divorce proceeding to be filed contemporaneously. This bill is identical to [HB 1945](#). **PASSED**

[SB 1758](#) Jurisdiction of juvenile and domestic relations district courts; state or federal benefit. Grants the juvenile and domestic relations district courts jurisdiction to make specific findings of fact required by state or federal law to enable a child to apply for or receive a state or federal benefit. This bill is identical to [HB 2679](#). **PASSED**

FAMILY LAW

– FAILED –

[HB 1653](#) Custody and visitation arrangements; best interests of the child; domestic abuse; child abuse. Requires the court to consider domestic abuse, defined in the bill, and child abuse in addition to family abuse and sexual abuse in current law when determining the best interests of the child for the purposes of custody and visitation arrangements. **FAILED**

[SB 1019](#) Referral to mediation in child custody, visitation, and support cases; appropriate cases. Requires a court, in assessing whether a

case regarding child custody, visitation, or support is appropriate for referral to mediation, to consider whether such case can be heard by the court within 120 days of the filing of an initial petition. The bill provides that if a case cannot be heard by the court within 120 days and is otherwise deemed appropriate for referral, such case shall be referred. **FAILED**

[HB 2074](#) Custody and visitation arrangements; presumption of equal time. Provides that there shall be a presumption that both parents be awarded equal time with a child subject to a custody and visitation order to the greatest extent practicable. The bill further provides that there shall be a presumption that both parents shall share equally in the responsibilities of raising their children. **FAILED**

[HB 2127](#) Best interests of a child; frequent and continuing contact with each parent. Provides that, while considering the best interests of a child for the purposes of determining custody or visitation arrangements, the court shall, when appropriate, assure frequent and continuing contact with each parent. **PASS HOUSE, FAIL SENATE**

[HB 2383](#) Juvenile and domestic relations court; social history report; consideration and waiver. Requires a court, whenever it adjudicates a juvenile delinquent of an act that would be a violent felony offense if committed by an adult, to direct an investigation and social history report of the juvenile to be completed and to consider the results of such report prior to entering disposition. **FAILED**

[HB 2407](#) Permanent foster care; eligibility. Allows local departments of social services and licensed child-placing agencies to place in permanent foster care, pursuant to a court order, a child who is 14 years of age or older but less than 16 years of age and who objected to the termination of residual parental rights, provided that no less restrictive

alternative is available and the permanent foster care placement is in the best interest of the child. **FAILED**

[SB 1539](#) Withholding of income for child support; independent contractors. Clarifies that income earned by an independent contractor may be withheld by court order for payment of child support obligations. **PASS SENATE, FAIL HOUSE 51-49**

[SB 1757](#) Custody and visitation arrangements; best interests of the child; child abuse. Requires the court to consider child abuse, in addition to family abuse and sexual abuse in current law, when determining the best interests of the child for the purposes of custody and visitation arrangements. **FAILED**

[SB 1776](#) Grounds for divorce; cruelty, abuse, desertion, or abandonment; waiting period. Eliminates the one-year waiting period for being decreed a divorce on the grounds of cruelty, reasonable apprehension of bodily hurt, or willful desertion or abandonment by either party. **FAILED**

GENERAL PRACTICE

– PASSED –

[HB 1814](#) **Deferral of jury service; persons who have legal custody of and are responsible for the care of a child.** Provides that a court may defer or limit jury service of persons who have legal custody of and are responsible for a child or children 16 years of age or younger requiring continuous care by such person during normal court hours to the term of court next after such period of responsibility ends. **PASSED**

[HB 1924](#) **Summons to compel attendance before commissioner of another state.** Removes the authorization of a summons to compel attendance of a citizen of the Commonwealth before commissioners or other persons appointed by authority of another state when the summons requires the attendance of such witness at a place not out of his county or city. This bill is a recommendation of the Boyd-Graves Conference. **PASSED**

[HB 1954](#) **Uniform Power of Attorney Act; breach of fiduciary duty; recovery of attorney fees.** Provides that in a judicial proceeding brought under the Uniform Power of Attorney Act commenced on or after July 1, 2019, if the court finds that the agent breached his fiduciary duty, the court may award costs and expenses, including reasonable attorney fees, to be paid by the agent found in violation. **PASSED**

[SB 1186](#) **Payment or delivery of small asset by affidavit; check, draft, or other negotiable instrument; financial institution.** Provides that a financial institution accepting a small asset that is a check, draft, or other negotiable instrument presented for deposit by an affidavit is discharged from all claims for the amount accepted. **PASSED**

[SB 1307](#) **Uniform Transfers to Minors Act; age 25.** Permits a transferor to transfer property

under the Uniform Transfers to Minors Act to an individual under the age of 21 to be paid, conveyed, or transferred to such individual upon his attaining 25 years of age, unless the minor attaining age 21 years of age delivers a written request therefor to the custodian. Under current law, such property must be paid, conveyed, or transferred upon the individual's attaining 18 years of age, or 21 years of age if specifically requested by the custodian. **PASSED**

[SB 1342](#) **Storage and mechanics' liens; amount of lien.** Provides that the amount of a mechanics' lien for the reasonable expenses of a keeper of a garage or a mechanic on a vehicle that is not subject to a chattel mortgage, security agreement, deed of trust, or other instrument shall be in an amount up to the value of the vehicle. **PASSED**

[SB 1382](#) **Reorganization of motor vehicle registration, licensing, and certificates of title statutes; segregation of criminal offenses and traffic offenses.** Moves the criminal offenses related to registration, licensing, and certificates of title included within § 46.2-613 to § 46.2-612. The bill reorganizes these statutes so that § 46.2-612 contains only criminal offenses and § 46.2-613 contains only traffic infractions. Removes the authority of the court to dismiss a summons for a criminal offense related to the registration, licensing, and certificates of title when proof of compliance with the law is provided to the court on or before the court date. The bill otherwise retains the elements of and penalties for the offenses and infractions. This bill is a recommendation of the Committee on District Courts and is identical to [HB 1711](#). **PASSED**

[SB 1383](#) **Dismissal of summons for expiration of vehicle registration; proof of compliance.** Authorizes courts to dismiss a summons issued for expiration of vehicle registration if the defendant provides to the court proof of compliance with the law on or

before the court date. This bill is a recommendation of the Committee on District Courts. This bill is identical to [HB 1712](#). **PASSED**

[SB 1610](#) Recordation tax; exemption for property transferred by deed of distribution. Provides that no recordation tax shall be required for the recordation of a deed of distribution, which is defined in the bill, when no consideration has passed between the parties. The bill also provides that a deed of distribution must state on its front page that it is a deed of distribution. **PASSED**

[SB 1782](#) Notaries; qualifications. Prohibits a person who has been convicted of a felony offense of (a) fraud or misrepresentation or (b) robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, perjury, bribery, treason, or racketeering from qualifying to be a notary, regardless of whether his civil rights have been restored. **PASSED**

GENERAL PRACTICE

— **FAILED** —

[HB 2444](#) Legal services plans. Repeals provisions under which the State Corporation Commission regulates legal services plans and under which the Department of Agriculture and Consumer Services regulates sellers of legal services plans. The measure also eliminates the premium tax assessed on legal services plans. **FAILED**

[SB 1478](#) Disposition of the remains of a decedent; right to control. Establishes a priority order for the right to control the disposition of the remains of a decedent; the location, manner, and condition of disposition; and the arrangements for funeral goods and services to be provided, as well as circumstances that would forfeit this right. The bill establishes procedures for resolving disagreements among those who have the right to control and

provides liability protections for licensed funeral establishments, funeral service licensees, registered crematories, or registered crematory operators that rely in good faith upon the instructions of an individual claiming the right of disposition. **FAILED**

[SB 1487](#) Driver's license designation; traumatic brain injury. Requires the Department of Motor Vehicles, upon the request of the applicant and presentation of a signed statement by a licensed neurologist confirming the applicant's condition, to designate a traumatic brain injury on the applicant's driver's license. **FAILED**

[SB 1441](#) Virginia Board for Court Reporters. Creates the Virginia Board for Court Reporters (the Board) as an independent board to regulate court reporting services in the state. Beginning July 1, 2020, no person may engage in or offer to engage in work as a court reporter unless he has been licensed by the Board. The bill establishes standards of conduct for court reporters and creates the Board for Court Reporters Fund to receive licensing and registration fees to fund the regulatory program. **FAILED**

JUDICIAL ADMINISTRATION

– PASSED –

[SB 1426](#) **Wills lodged in clerk's office for safekeeping.** Permits the clerk of a circuit court to destroy a will that has been lodged in his office for safekeeping for 100 years or more.

PASSED

[SB 1655](#) **Specialty dockets; report.** Requires the Office of the Executive Secretary of the Supreme Court to develop a statewide evaluation model and conduct ongoing evaluations of the effectiveness and efficiency of all local specialty dockets established in accordance with the Rules of Supreme Court of Virginia and submit a report of these evaluations to the General Assembly by December 1 of each year. This bill is identical to [HB 2665](#). **PASSED**

JUDICIAL ADMINISTRATION

– FAILED –

[HB 1630](#) **Substitute judges; powers and duties; entry of a final order.** Provides that a substitute judge has the power to enter a final order in any case heard by the substitute judge for a period of 14 days after the date of a hearing of such case. **FAILED**

[SB 1121](#) **Maximum number of judges in each judicial district.** Increases from 11 to 12 the maximum number of authorized general district court judgeships in the nineteenth judicial district. This bill is a recommendation of the Committee on District Courts. **FAILED**

[HB 2323](#) **Clerks; refusal to record certain liens or encumbrances.** Provides that a clerk may refuse to record a lien or encumbrance filed by a person previously convicted of filing a false lien or encumbrance, provided that such lien or encumbrance to be recorded is the same or

substantially similar to the lien or encumbrance that led to such person's conviction. The bill further allows a clerk to refuse to record a lien or encumbrance if the clerk reasonably believes such lien or encumbrance is being filed maliciously. The bill provides that the person attempting to file such lien or encumbrance shall receive written notice of such refusal and an opportunity to be heard as to why such lien or encumbrance is not malicious. **FAILED**

[SB 1384](#) **Virginia Retirement System; increased retirement allowance for judges.** Increases by five percent the retirement allowance for judges for service earned on and after their fifty-fifth birthday. The bill provides that the increase applies only to judges who retire on or after July 1, 2019. **FAILED**

[HB 2510](#) **Maximum number of judges in each judicial district.** Increases from 11 to 12 the maximum number of authorized general district court judgeships in the nineteenth judicial district. This bill is a recommendation of the Committee on District Courts. **FAILED**

LONG TERM CARE

– PASSED –

[HB 1674](#) Abuse and neglect of incapacitated adults; informed consent. Clarifies, for the purposes of the exemptions to abuse and neglect of incapacitated adults, that the informed consent or a declaration of the incapacitated person must have been given when such person was not incapacitated and that any wishes of the incapacitated person relied upon must have been made known when such person was not incapacitated. The bill provides that its provisions are declaratory of existing law. **PASSED**

[SB 1217](#) Nursing homes; truth in advertising for inspections, surveys, and investigations. Requires that if inspection, survey, or investigation data is used in an advertisement regarding nursing homes, the advertisement also include the following information: (i) the date on which the survey, inspection, or investigation was conducted; (ii) a statement that the facility is required to submit a plan of correction in response to any and all statements of deficiencies; (iii) if a finding or deficiency cited in a statement of deficiencies has been corrected, a statement that the finding or deficiency has been corrected and the date on which the finding or deficiency was corrected; and (iv) a statement that the advertisement publication is not authorized or endorsed by the Virginia Department of Health, the Centers for Medicare and Medicaid Services, the Office of the Inspector General, or any other governmental agency. The bill provides that failure to include this required information constitutes a violation of the Virginia Consumer Protection Act. The bill also requires that such information be in the same font, color, and size as the other text in the advertisement. This bill is identical to [HB 2219](#). **PASSED**

[SB 1224](#) Protective services; adult abuse, neglect, and exploitation; multidisciplinary teams. Authorizes local departments of social services to foster, when practicable, the creation, maintenance, and coordination of hospital and community-based multidisciplinary teams focused on the abuse, neglect, and exploitation of adults 60 years of age or older or 18 years of age or older who are physically or mentally incapacitated. The bill provides that such teams may: (i) assist the local department of social services in identifying abused, neglected, and exploited adults; (ii) coordinate medical, social, and legal services for abused, neglected, and exploited adults and their families; (iii) develop innovative programs for detection and prevention of the abuse, neglect, and exploitation of adults; (iv) promote community awareness and action to address adult abuse, neglect, and exploitation; and (v) disseminate information to the general public regarding the problem of adult abuse, neglect, and exploitation, strategies and methods for preventing such abuse, neglect, and exploitation and treatment options for abused, neglected, and exploited adults. The bill also allows the attorney for the Commonwealth in each jurisdiction to establish a multidisciplinary adult abuse, neglect, and exploitation response team to review cases of abuse, neglect, and exploitation of adults. Such multidisciplinary team may be established separately or in conjunction with any already existing multidisciplinary team. This bill is identical to [HB 2560](#). **PASSED**

[SB 1409](#) Assisted living facilities; requirement for licensed administrator. Increases from one to two the number of times a licensed assisted living facility may operate under the supervision of an acting administrator during any two-year period. **PASSED**

[SB 1410](#) Board of Social Services; regulations governing assisted living facilities; staffing during overnight hours. Directs the Board of

Social Services to amend regulations governing staffing of assisted living facility units with residents who have serious cognitive impairment due to a primary psychiatric diagnosis of dementia and are unable to recognize danger or protect their own safety and welfare to require that the following number of direct care staff members be awake and on duty during overnight hours: (i) when 22 or fewer residents are present, at least two direct care staff members; (ii) when 23 to 32 residents are present, at least three direct care staff members; (iii) when 33 to 40 residents are present, at least four direct care staff members; and (iv) when more than 40 residents are present, at least four direct care staff members plus at least one additional direct care staff member for every 10 residents or portion thereof in excess of 40 residents. This bill is identical to [HB 2521](#). **PASSED**

[HB 2521](#) Board of Social Services; regulations governing assisted living facilities; staffing during overnight hours. Directs the Board of Social Services to amend regulations governing staffing of assisted living facility units with residents who have serious cognitive impairment due to a primary psychiatric diagnosis of dementia and are unable to recognize danger or protect their own safety and welfare to require that the following number of direct care staff members be awake and on duty during overnight hours: (i) when 22 or fewer residents are present, at least two direct care staff members; (ii) when 23 to 32 residents are present, at least three direct care staff members; (iii) when 33 to 40 residents are present, at least four direct care staff members; and (iv) when more than 40 residents are present, at least four direct care staff members plus at least one additional direct care staff member for every 10 residents or portion thereof in excess of 40 residents. This bill is identical to [SB 1410](#). **PASSED**

LONG TERM CARE

– **FAILED** –

[HB 2040](#) Background checks; persons providing care for elderly or disabled. Allows any person who provides or seeks to provide unsupervised care or assistance to an elderly or disabled person to request a national fingerprint criminal background check on himself at his cost. **FAILED**

[SB 1570](#) Adult protective services; central registry. Creates a central registry of founded complaints of adult abuse, neglect, and exploitation to be maintained by the State Department of Social Services. The bill establishes (i) investigation requirements for local departments of social services related to complaints of adult abuse, neglect, and exploitation; (ii) record retention and disclosure requirements for the Department and local departments; (iii) notice requirements related to findings by local departments and central registry entries; and (iv) an appeals process to contest the findings of a local department related to founded reports of adult abuse, neglect, or exploitation. **FAILED**

BUSINESS/COMMERCIAL LAW

– PASSED –

[HB 2272](#) **Limited liability companies; Protected Series Act.** Provides for the creation by a limited liability company (LLC) of one or more protected series. The measure provides that each protected series may have different ownership, management structures, assets, and liabilities. Each protected series may function in a manner analogous to a separate legal entity within the LLC that established the protected series, which is referred to as the series LLC. The measure provides a process through which debts and obligations of one protected series are neither the debts nor obligations of any other protected series nor of the series LLC. Under the measure, a separate public filing is required to establish each protected series of a series LLC. The measure specifies rules for disregarding the internal liability shields that protect the assets of one protected series from the creditors of another. The measure provides that assets not properly associated with a protected series may be subject to the claims of creditors even if the internal shields among series remain intact. The measure is based on the Uniform Protected Series Act prepared by the National Conference of Commissioners on Uniform State Laws. The measure has a delayed effective date of July 1, 2020. **PASSED**

[HB 2478](#) **Virginia Stock Corporation Act.** Updates and modernizes the Virginia Stock Corporation Act (the Act) to conform to many provisions of the 2016 revision of the Model Business Corporation Act produced by the Corporate Laws Committee of the American Bar Association's Business Law Section. **PASSED**

BUSINESS/COMMERCIAL LAW

– FAILED –

[HB 2415](#) **Business records electronically registered on a blockchain self-authenticating.** Creates a rebuttable presumption that a business record electronically registered on a blockchain is a self-authenticating document for certain facts. The bill provides that such presumption does not extend to the truthfulness, validity, or legal status of the contents of the fact or record. **FAILED**

[SB 1369](#) **Virginia Public Procurement Act; statute of limitations on actions on construction contracts; statute of limitations on actions on performance bonds.** Provides that no action may be brought by a public body on any construction contract, including construction management and design-build contracts, unless such action is brought within five years after substantial completion of the work on the project and that no action may be brought by a public body on a warranty or guarantee in such construction contract more than one year from the breach of that warranty, but in no event more than one year after the expiration of such warranty or guarantee. The bill also limits the time frame during which a public body, other than the Department of Transportation, may bring an action against a surety on a performance bond to within one year after substantial completion of the work on the project. Current law allows a public body, other than the Department of Transportation, to bring such an action within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action. **FAILED**

EMPLOYMENT LAW

– PASSED –

[SB 1387](#) **Covenants not to compete; low-wage employees; civil penalty.** Prohibits an employer from entering into, enforcing, or threatening to enforce a covenant not to compete between the employer and a low-wage employee. The employer is subject to a civil penalty of \$10,000 per violation. The bill defines "low-wage employee" as either (i) an employee, intern, student, apprentice, or trainee whose average weekly earnings are less than the average weekly wage of the Commonwealth or who is employed without pay or (ii) an independent contractor who is compensated for his services at an hourly rate that is less than the median hourly wage. **PASSED**

EMPLOYMENT LAW

– FAILED –

[HB 1687](#) **Nonpayment of wages; private action.** Provides that an employee has a private cause of action against an employer who fails to pay wages to recover the amount of wages due plus interest at eight percent annually from the date the wages were due. If the court finds that the employer knowingly failed to pay wages, the court shall award the employee reasonable attorney fees and other costs. If the court finds that the employer's failure to pay wages was willful and with intent to defraud the employee, the court shall also award the employee three times the amount of wages due. **FAILED**

[HB 1713](#) **Employment; prohibited retaliatory action.** Prohibits an employer from discharging, disciplining, threatening, discriminating against, penalizing, or taking other retaliatory action against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee (i) reports a violation or suspected

violation of any federal or state law or regulation to a supervisor or to any governmental body or law-enforcement official; (ii) is requested by a governmental body or law-enforcement official to participate in an investigation, hearing, or inquiry; (iii) refuses to engage in a criminal act that would subject the employee to criminal liability; (iv) refuses an employer's order to perform an action that the employee believes, which belief has an objective basis in fact, violates any federal or state law or regulation and the employee informs the employer that the order is being refused for that reason; or (v) provides information to or testifies before any governmental body or law-enforcement official conducting an investigation, hearing, or inquiry into any alleged violation by the employer of federal or state law or regulation. **FAILED**

[HB 1792](#) **Employment; covenants not to compete; low-wage employees.** Prohibits an employer from entering into a covenant not to compete with any of its low-wage employees. The measure declares that covenants not to compete entered into by an employer and a low-wage employee are contrary to public policy and are void and unenforceable. **FAILED**

[SB 998](#) **Nondiscrimination in public employment.** Prohibits discrimination in public employment on the basis of sexual orientation or gender identity, as defined in the bill. The bill also codifies for state and local government employment the current prohibitions on discrimination in employment on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, or status as a veteran. **FAILED**

[SB 1059](#) **Wage or salary history inquiries prohibited; civil penalty.** Prohibits a prospective employer from (i) requiring as a condition of employment that a prospective employee provide or disclose the prospective

employee's wage or salary history or (ii) attempting to obtain the wage or salary history of a prospective employee from the prospective employee's current or former employers. **FAILED**

HB 1859 Virginia Human Rights Act; pregnancy, childbirth, or related medical conditions; causes of action. Provides that no employer shall discharge any employee on the basis of pregnancy, childbirth, or related medical conditions, including lactation. **FAILED**

SB 1199 Public employment; inquiries by state agencies and localities regarding criminal convictions, charges, and arrests. Prohibits state agencies from including on any employment application a question inquiring whether the applicant has ever been arrested or charged with any crime. The bill prohibits state agencies from asking an applicant if he has ever been convicted of any crime unless the inquiry takes place after the applicant has received a conditional offer of employment, which offer may be withdrawn if the applicant has a conviction record that directly relates to the duties and responsibilities of the position. **FAILED SENATE, 24-16**

HB 2001 Payment of wages. Removes the exemptions that exclude newsboys, shoe-shine boys, ushers, doormen, concession attendants, and theater cashiers from coverage under the Virginia Minimum Wage Act (the Act). The measure limits the Act's exemption for babysitters to those not employed more than 10 hours per week. The measure eliminates the Act's exemption for persons employed by an employer that does not have four or more employees. **FAILED**

HB 2120 Paid family and medical leave program. Requires the Virginia Employment Commission to establish and administer a paid family and medical leave program with benefits beginning January 1, 2022. Under the program,

benefits are paid to eligible employees for family and medical leave. **FAILED**

HB 2261 Paid medical and family leave for employees; civil penalties. Requires employers with 15 or more employees to provide to each employee paid medical and family leave at a rate of 0.46 hours per 40 hours worked, up to 24 hours in any 12-month period. **FAILED**

HB 2349 Nonpayment of wages; investigations. Authorizes the Commissioner of Labor and Industry, if he acquires information during an investigation of a complaint of an employer's failure or refusal to pay wages that creates a reasonable belief that other employees of the same employer may not have been paid wages, to investigate whether the employer has failed or refused to make a required payment of wages to other employees. **FAILED**

HB 2363 Nonpayment of wages; discriminatory actions prohibited. Prohibits an employer from discharging or otherwise discriminating against an employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding related to the failure to pay wages, or has testified or is about to testify in any such proceeding. **FAILED**

HB 2393 Child labor; tobacco farms; civil penalty. Prohibits any person from employing a child under the age of 18 to work in direct contact with tobacco plants or dried tobacco leaves unless (i) the owner of the farm or other location at which such work is conducted is the child's parent, grandparent, or legal guardian or (ii) the child's parent or legal guardian has consented in writing to such employment. **FAILED**

SB 1423 Confidentiality, nondisparagement, or nondisclosure provisions; communication with law-enforcement agencies. Prohibits the use of provisions in contracts, written agreements, or

settlement agreements resolving litigation pertaining to the employment of an employee in the Commonwealth, whether labeled as confidentiality, nondisparagement, or nondisclosure provisions, that restrict or deter consumers or employees from communicating or cooperating with a federal, state, or local law-enforcement agency. **FAILED SENATE COURTS, 7-7**

[HB 2496](#) **Virginia Human Rights Act; creation of cause of action for discrimination based on race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, or age.** Creates a cause of action against any employer employing more than five but fewer than 15 persons who engages in an unlawful discriminatory act against any employee on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, including lactation. **FAILED**

[HB 2524](#) **Nonpayment of wages; private action.** Provides that an employee has a private cause of action against an employer who fails to pay wages. The measure provides that if the court finds that the employer knowingly failed to pay the wages, it shall also award the employee reasonable attorney fees and other costs. **FAILED**

[HB 2736](#) **Local employee grievance procedure.** Provides that qualifying grievances by local government employees shall advance to a final step as agreed upon by the aggrieved and the local government; however, if an agreement cannot be reached on whether to use a panel hearing or hearing officer, a three-person panel shall be used. **FAILED**

CONSUMER LAW

– PASSED –

[HB 1660](#) **Landlord and tenant; renter's insurance; disclaimer.** Provides that if a rental agreement does not require the tenant to obtain renter's insurance, the landlord must provide a written notice to the tenant, prior to the execution of the rental agreement, stating that (i) the landlord is not responsible for the tenant's personal property, (ii) the landlord's insurance coverages do not cover the tenant's personal property, and (iii) if the tenant wishes to protect his personal property, he should obtain renter's insurance. **PASSED**

[HB 1898](#) **Virginia Residential Landlord and Tenant Act; tenant's right of redemption.** Extends the amount of time that a tenant may have an unlawful detainer dismissed to two days before a writ of eviction is delivered to be executed if the tenant pays all amounts claimed on the summons in unlawful detainer to the landlord, the landlord's attorney, or the court. **PASSED**

[HB 1923](#) **Virginia Residential Landlord and Tenant Act; noncompliance with rental agreement; tenant's right to reasonable attorney fees.** Provides that a tenant is entitled to reasonable attorney fees when a tenant successfully raises as a defense the landlord's noncompliance with the rental agreement and the court enters judgment in favor of the tenant. **PASSED**

[HB 2007](#) **Eviction; writs of possession and eviction.** Changes the terminology from writ of possession to writ of eviction for the writ executed by a sheriff to recover real property pursuant to an order of possession. The bill specifies that an order of possession remains effective for 180 days after being granted by the court and clarifies that any writ of eviction not executed within 30 days of its issuance shall be

vacated as a matter of law, and no further action shall be taken by the clerk. As introduced, this bill is a recommendation of the Virginia Housing Commission and is identical to [SB 1448](#). **PASSED**

[HB 2054](#) **Virginia Residential Landlord and Tenant Act; rental agreement; provisions made applicable by operation of law.** Requires a landlord to offer the tenant a written rental agreement containing the terms governing the rental of the dwelling unit and setting forth the terms and conditions of the landlord tenant relationship. The bill provides that in the event a written rental agreement is not offered by the landlord, a rental tenancy shall be deemed to exist by operation of law and establishes the terms and conditions of that tenancy. This bill is a recommendation of the Virginia Housing Commission. This bill is identical to [SB 1676](#). **PASSED**

[HB 2174](#) **Motor vehicle dealers and manufacturers.** Provides that if a motor vehicle manufacturer or factory branch discontinues, sells, or transfers its right to manufacture a line-make of motor vehicles, and the acquiring manufacturer or factory branch does not honor an existing franchise agreement with motor vehicle dealers in Virginia, such discontinuation, sale, or transfer shall constitute a termination of the franchise and such motor vehicle dealers shall be entitled to compensation pursuant to Virginia law. **PASSED**

[HB 2218](#) **Virginia Consumer Protection Act; prohibited practices; unlawful practice of an occupation or profession.** Makes the unlawful and unlicensed practice of contracting, real estate brokering, or real estate sales, in connection with a consumer transaction, unlawful under the Virginia Consumer Protection Act. **PASSED**

[HB 2304](#) **Landlord and tenant; renter's insurance obtained by landlord on behalf of**

tenants; notice of waiver of subrogation provisions. Requires a landlord that has obtained renter's insurance coverage on behalf of his tenants to include, as part of the summary of the insurance policy or certificate evidencing the coverage as currently required by law, a statement regarding whether the insurance policy contains a waiver of subrogation provision. The bill provides that any failure of the landlord to provide such summary or certificate, or to make available a copy of the insurance policy, shall not affect the validity of the rental agreement. **PASSED**

SB 1445 Virginia Residential Landlord and Tenant Act; tenant's right of redemption. Extends the amount of time that a tenant may have an unlawful detainer dismissed to two days before a writ of eviction is delivered to be executed if the tenant pays all amounts claimed on the summons in unlawful detainer to the landlord, the landlord's attorney, or the court. **PASSED**

SB 1448 Eviction; writs of possession and eviction. Changes the terminology from writ of possession to writ of eviction for the writ executed by a sheriff to recover real property pursuant to an order of possession. The bill specifies that an order of possession remains effective for 180 days after being granted by the court and clarifies that any writ of eviction not executed within 30 days of its issuance shall be vacated as a matter of law, and no further action shall be taken by the clerk. As introduced, this bill is a recommendation of the Virginia Housing Commission and is identical to [HB 2007](#). **PASSED**

SB 1450 Eviction Diversion Pilot Program. Establishes the Eviction Diversion Pilot Program (the Program), consisting of specialized dockets within the existing structure of the general district courts for the cities of Danville, Hampton, Petersburg, and Richmond. **PASSED**

CONSUMER LAW

– **FAILED** –

HB 1647 Virginia Fair Housing Law; unlawful discriminatory housing practices. Prohibits any locality, its employees, or its appointed commissions from discriminating (i) in the application of local land use ordinances or guidelines; (ii) in the permitting of housing developments on the basis of race, color, religion, national origin, sex, elderliness, familial status, or handicap; or (iii) in the permitting of housing developments because the housing development contains or is expected to contain affordable housing units occupied or intended for occupancy by families or individuals with incomes at or below 80 percent of the median income of the area where the housing development is located or is proposed to be located. **FAILED**

HB 1780 Salvage vehicles. Removes the requirement that a vehicle be late model in order to meet the definition of salvage vehicle due to having been (i) acquired by an insurance company as part of the claims process or (ii) damaged to the extent that its estimated cost of repair would exceed its value before the damage minus the salvage value. **FAILED**

HB 1860 Virginia Residential Landlord and Tenant Act; nonpayment of rent; written notice of termination; time period. Changes from five to 14 days the period within which a tenant is required to pay rent after written notice of termination of the rental agreement is served by the landlord on the tenant. **FAILED**

HB 2196 Debt settlement services; civil penalties. Establishes procedures and requirements for the licensure by the State Corporation Commission of agencies providing debt settlement services. The measure defines debt settlement services as any action or negotiation initiated or taken by or on behalf of

any consumer with any creditor of the consumer for the purpose of obtaining debt forgiveness of a portion of the credit extended by the creditor to the consumer or reduction of payments, charges, or fees payable by the consumer. **FAILED**

[SB 1266](#) Open-end credit plans;

penalty. Requires that any person engaged in the business of extending credit under an open-end credit plan under which interest is charged at an annual rate that exceeds 36 percent obtain a license to do so from the State Corporation Commission. **FAILED**

[SB 1364](#) Salvage vehicles. Removes the requirement that a vehicle be late model in order to meet the definition of salvage vehicle due to having been (i) acquired by an insurance company as part of the claims process or (ii) damaged to the extent that its estimated cost of repair would exceed its value before the damage minus the salvage value. **FAILED**

[SB 1438](#) Virginia Residential Landlord and Tenant Act. Provides that when a landlord as plaintiff requests that an initial hearing on a summons for unlawful detainer be set on a date later than 21 days from the filing of such summons, the initial hearing shall not be set on a date later than 30 days after the date of the filing. The bill further provides that an order of possession for the premises in an unlawful detainer action shall not be entered unless the landlord or the landlord's attorney or agent has presented a copy of a proper termination notice that the court admits into evidence. **FAILED**

[HB 2677](#) Virginia Fair Housing Law; unlawful discriminatory housing practices; sexual orientation and gender identity. Adds discrimination on the basis of an individual's sexual orientation or gender identity as an unlawful housing practice. The bill defines sexual orientation and gender identity. **FAILED**

[HB 2728](#) Virginia Residential Property Disclosure Act; required disclosures for buyer to beware; impounding structures or dams. Adds an additional required disclosure statement for the buyer to beware in regards to the condition or regulatory status of an impounding structure or dam either on the property or under the ownership of the homeowners association to which the owner of the property is required to join. **FAILED**

PRODUCT LIABILITY

– PASSED –

[HB2143](#) **Air bags; manufacture, importation, sale, etc., of counterfeit or nonfunctional air bag prohibited; penalty.** Provides that a person is guilty of a Class 1 misdemeanor if he knowingly manufactures, imports, sells, installs, or reinstalls a counterfeit air bag or nonfunctional air bag, or any device that is intended to conceal a counterfeit air bag or nonfunctional air bag, in a motor vehicle. The bill provides an exemption for the sale, installation, reinstallation, or replacement of a motor vehicle air bag on a vehicle solely used for police work. The bill also provides that any sale, installation, reinstallation, or replacement of a motor vehicle air bag with a counterfeit, nonfunctional, or otherwise unlawful air bag shall not be construed as a superseding cause that limits the liability of any party in any civil action. **PASSED**

PRODUCT LIABILITY

– FAILED –

[HB 2394](#) **Product safety; flame retardants; regulations; fund; civil penalty.** Prohibits the manufacture or sale in the Commonwealth, beginning July 1, 2020, of upholstered furniture intended for residential use or any product that is intended to come into close contact with a person younger than 12 years of age if such upholstered furniture or product contains any flame-retardant chemical listed in the bill. The bill requires the manufacturer of any prohibited product to notify sellers of the prohibition by March 31, 2020, and requires a manufacturer to recall by that date any products that it has sold in violation of the prohibition. **FAILED**