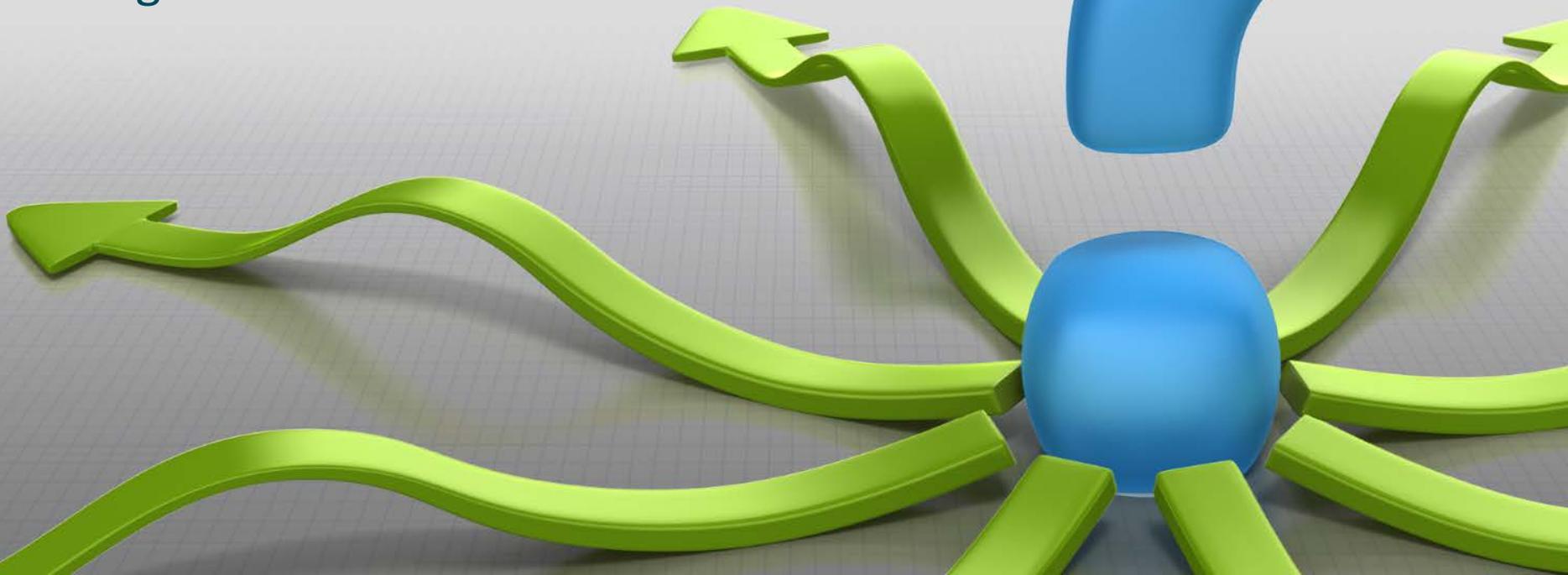




# Requested Decisions

Sentencing Guidelines Manual

Virginia Crime Codes



# Requested Decisions



VCC

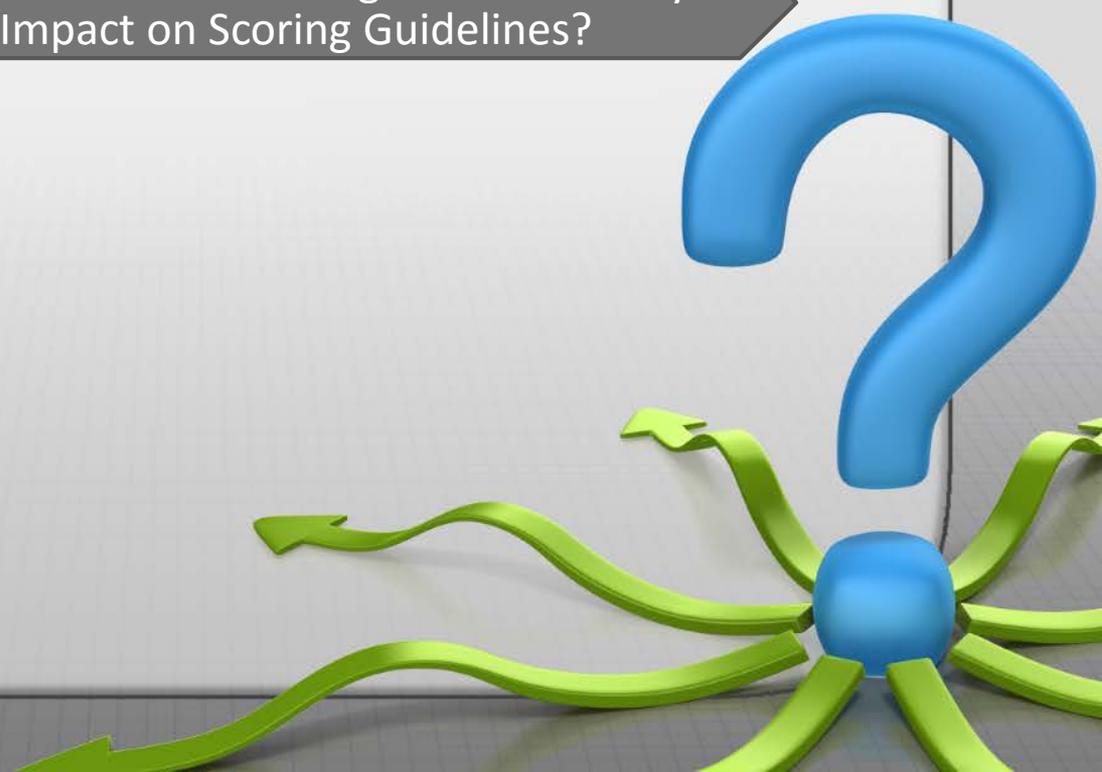
Establish New VCCs for Larceny with \$500 Threshold?

VCC

Establish VCCs for Weapons and Vandalism Offenses Punishable as Murder?

Manual

Include Statement on the Change in the Larceny Threshold & Impact on Scoring Guidelines?



# Requested Decision

Do the Virginia Crime Codes need to change to reflect the felony threshold for grand larceny?

## OPTION 1

LAR-2359-F9 → LAR-8631-F9

Retire and Add All New VCCs

## OPTION 2

LAR-2359-F9 → LAR-2359-F9

Retire and Reestablish the Same VCCs with New Descriptions

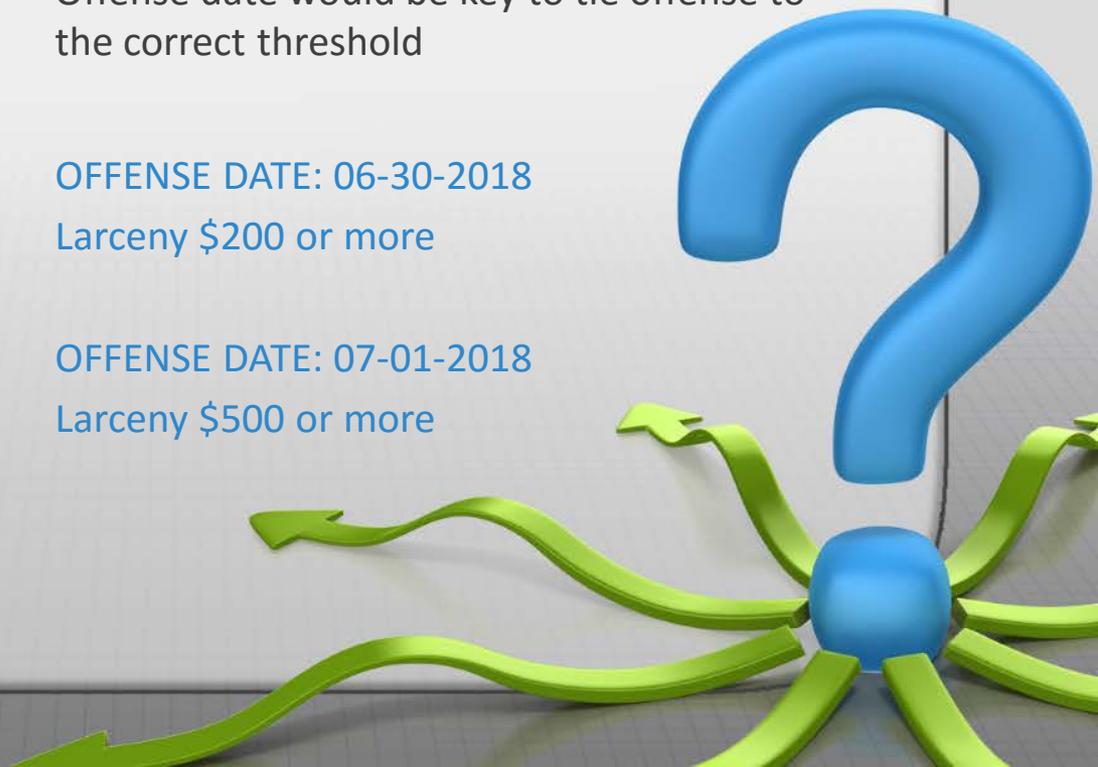
Offense date would be key to tie offense to the correct threshold

OFFENSE DATE: 06-30-2018

Larceny \$200 or more

OFFENSE DATE: 07-01-2018

Larceny \$500 or more



# Requested Decision

Do the Virginia Crime Codes need to change to reflect the felony threshold for grand larceny?

## OPTION 1

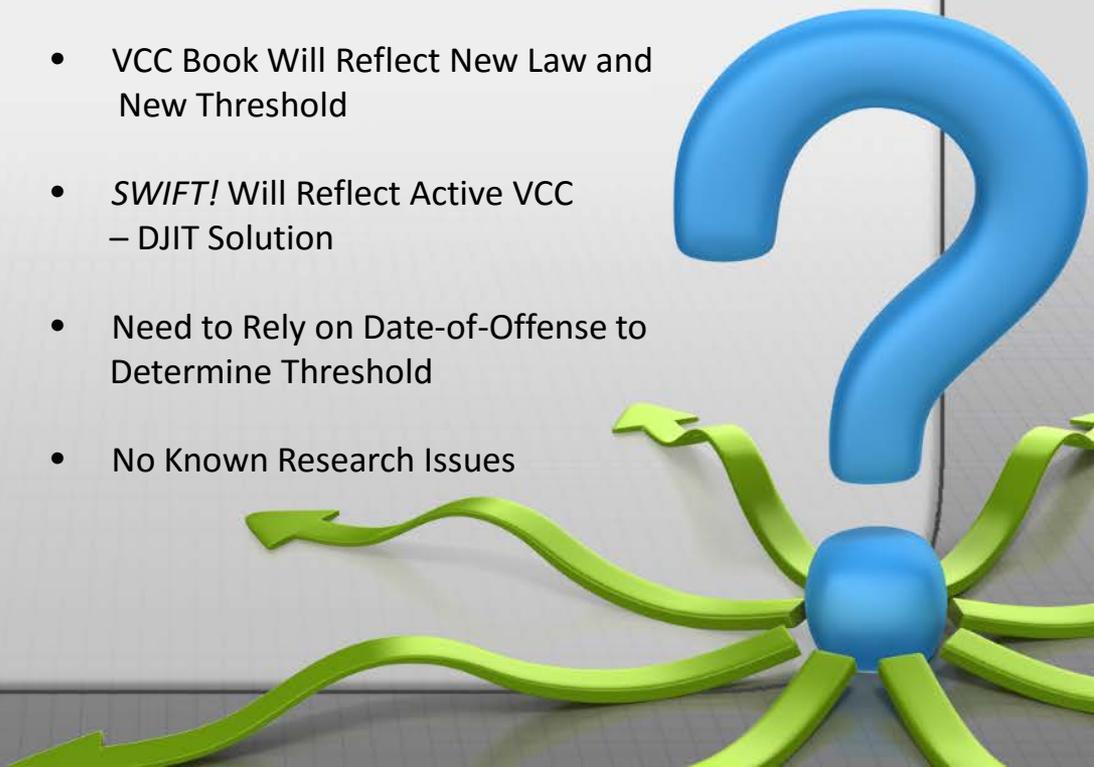
Retire and Add All New VCCs

- Need to List Both in SG Manual or Crosswalk
- What if Threshold Changed Again?
- User Issues with New VCCs?

## OPTION 2

Retire and Reestablish the Same VCCs with New Descriptions

- UST (*Uniformed Statute Table – used by all agencies*) Will Adjust Description Based on Offense Date
- VCC Book Will Reflect New Law and New Threshold
- *SWIFT!* Will Reflect Active VCC – DJIT Solution
- Need to Rely on Date-of-Offense to Determine Threshold
- No Known Research Issues



## Option 2: 134 VCC Description Changes

## Option 1: 134+ New VCCs

DESCRIPTION	VCC	STATUTE
Employee, etc., of bank/trust misapplies, etc., ≥ \$200	BNK-5857-F9	6.1-122
Employee, etc., of bank/trust misapplies, etc., < \$200	BNK-5856-M1	6.1-122
Employee, etc., of bank misapplies, etc., ≥ \$200	BNK-5915-F9	6.2-943(A)
Employee, etc., of bank misapplies, etc., < \$200	BNK-5914-M1	6.2-943(A)
Employee, etc., of trust misapplies, etc., ≥ \$200	BNK-5925-F9	6.2-1044(A)
Employee, etc., of trust misapplies, etc., < \$200	BNK-5924-M1	6.2-1044(A)
Employee, etc., of trust subsidiary misapplies, etc., ≥ \$200	BNK-5931-F9	6.2-1062(A)
Employee, etc., of trust subsidiary misapplies, etc., < \$200	BNK-5932-M1	6.2-1062(A)
Conspire to commit or assist in larceny with aggregate value over \$200	LAR-2304-F9	18.2-23(B)
Unoccupied - value \$200 or more	ARS-2012-F4	18.2-80
Unoccupied - value less than \$200	ARS-2013-M1	18.2-80
Value less than \$200, destroy maliciously or w/intent to defraud	ARS-2019-M1	18.2-81
Value \$200 or more, destroy maliciously or w/intent to defraud	ARS-2018-F4	18.2-81
\$200 or more not from person	LAR-2359-F9	18.2-95(ii)
Less than \$200 not from person	LAR-2366-M1	18.2-96(2)
Altering, defacing, removing, possessing serial no. < \$200	LAR-2371-M1	18.2-96.1
Altering, defacing, removing, possessing serial no. ≥ \$200	LAR-2372-F5	18.2-96.1
Certain animals and poultry worth less than \$200	LAR-2318-F6	18.2-97
Or any book of accounts - value < \$200	LAR-2335-M1	18.2-98
Or any book of accounts - value \$200 or more	LAR-2334-F9	18.2-98
Fraudulently sell, remove, etc., less than \$200	LAR-2396-M1	18.2-101
Fraudulently sell, remove, etc., \$200 or more	LAR-2395-F9	18.2-101
Unauthorized use of animal, auto, boat worth < \$200	LAR-2413-M1	18.2-102
Unauthorized use of animal, auto, boat worth \$200 or more	LAR-2412-F6	18.2-102
Shoplift, alter price tags, ≥ \$200	LAR-2354-F9	18.2-103
Shoplift, alter price tags, < \$200 (second time)	LAR-2338-M9	18.2-103
Shoplift, alter price tags, < \$200 (third time)	LAR-2339-F6	18.2-103
Shoplift, alter price tags, < \$200 (first time)	LAR-2337-M1	18.2-103
Receive stolen property/goods - \$200 or more	LAR-2808-F9	18.2-108(A)
Receive stolen property/goods - less than \$200	LAR-2809-M1	18.2-108(A)
Receive goods used in an investigation valued at less than \$200	LAR-2352-M1	18.2-108(B)
Receive goods used in an investigation valued at \$200 or more	LAR-2353-F9	18.2-108(B)
Intent to sell/distribute stolen property valued at \$200 or more	LAR-2302-F9	18.2-108.01(A)

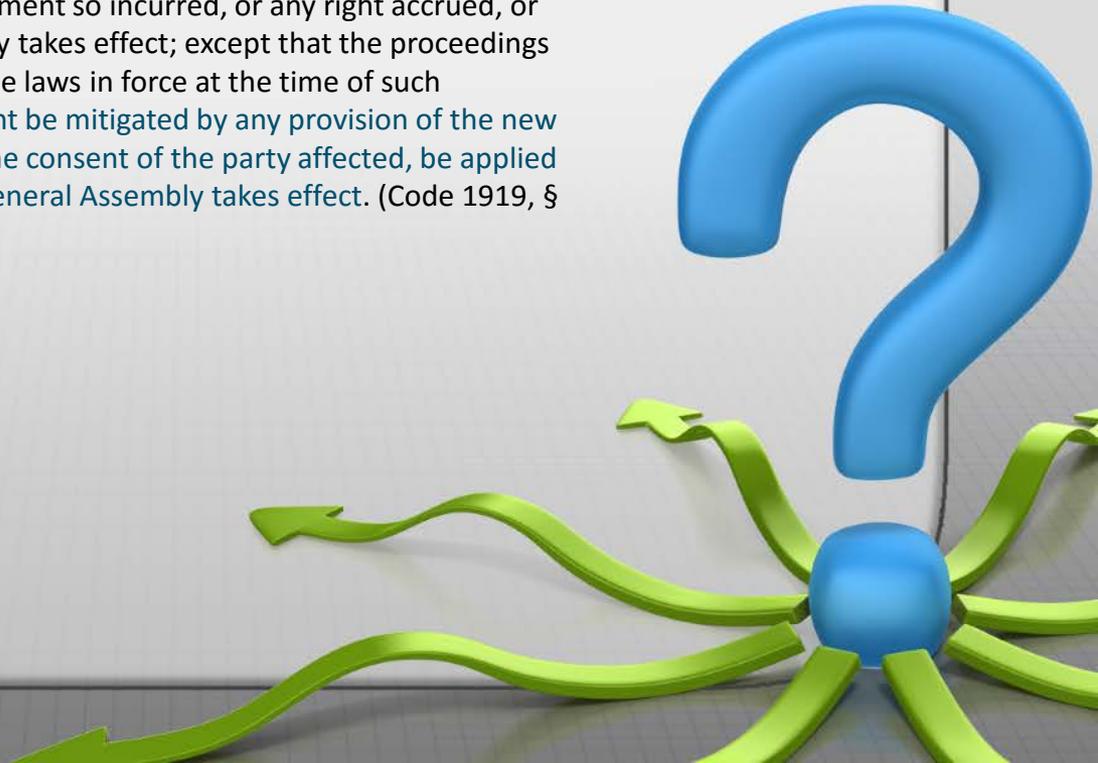


# Code of Virginia

## Date of Offense May Not Identify Threshold

**§ 19.2-290. Conviction of petit larceny though thing stolen worth more than \$200.** — In a prosecution for petit larceny, though the thing stolen be of the value of \$200 or more, the jury may find the accused guilty; and upon a conviction under this section or § 19.2-289 the accused shall be sentenced for petit larceny. (Code 1950, § 19.1-253; 1960, c. 366; 1966, c. 247; 1975, c. 495; 1981, c. 197.)

**§ 1-239. Repeal not to affect liabilities; mitigation of punishment.** — No new act of the General Assembly shall be construed to repeal a former law, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture, or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture, or punishment so incurred, or any right accrued, or claim arising before the new act of the General Assembly takes effect; except that the proceedings thereafter held shall conform, so far as practicable, to the laws in force at the time of such proceedings; and if any penalty, forfeiture, or punishment be mitigated by any provision of the new act of the General Assembly, such provision may, with the consent of the party affected, be applied to any judgment pronounced after the new act of the General Assembly takes effect. (Code 1919, § 6, § 1-16; 2005, c. 839.)



# Requested Decision

Do the Virginia Crime Codes need to change to reflect the felony threshold for grand larceny?

## OPTION 1

Retire and Add All New VCCs

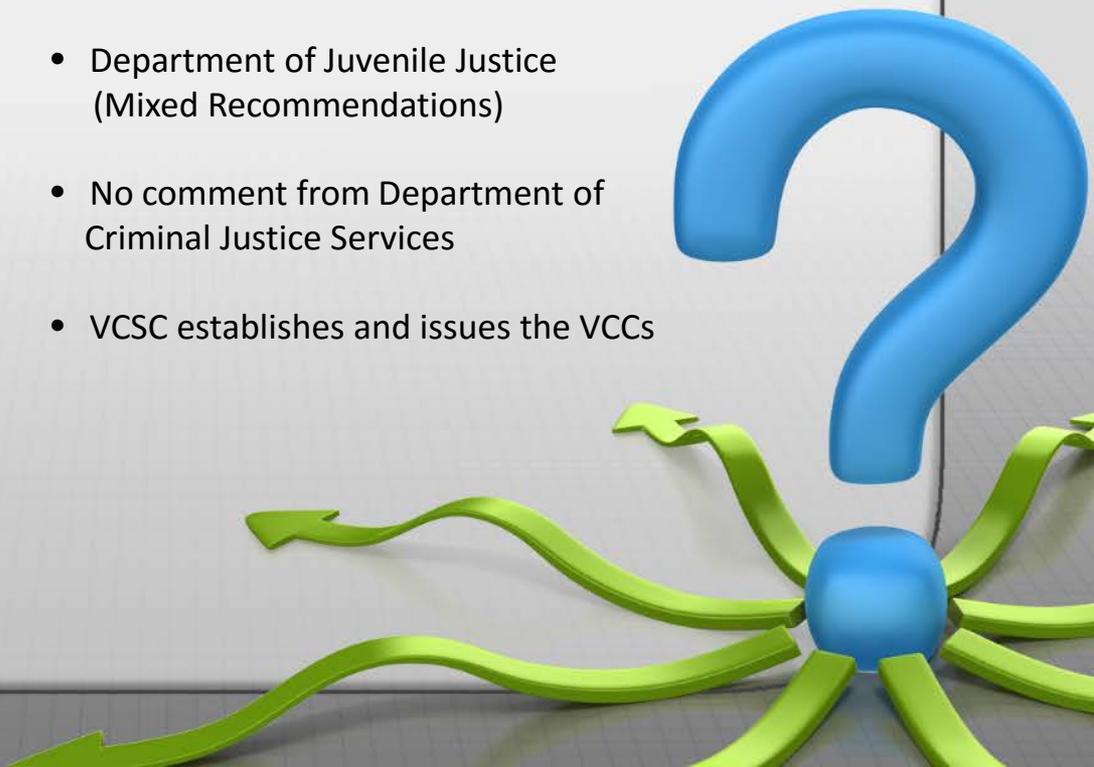
- VCSC establishes and issues the VCCs



## OPTION 2

Retire and Reestablish the Same VCCs with New Descriptions

- Magistrate Division, Supreme Court of Virginia
- Department of Corrections
- Department of Juvenile Justice (Mixed Recommendations)
- No comment from Department of Criminal Justice Services
- VCSC establishes and issues the VCCs



# Requested Decisions



VCC

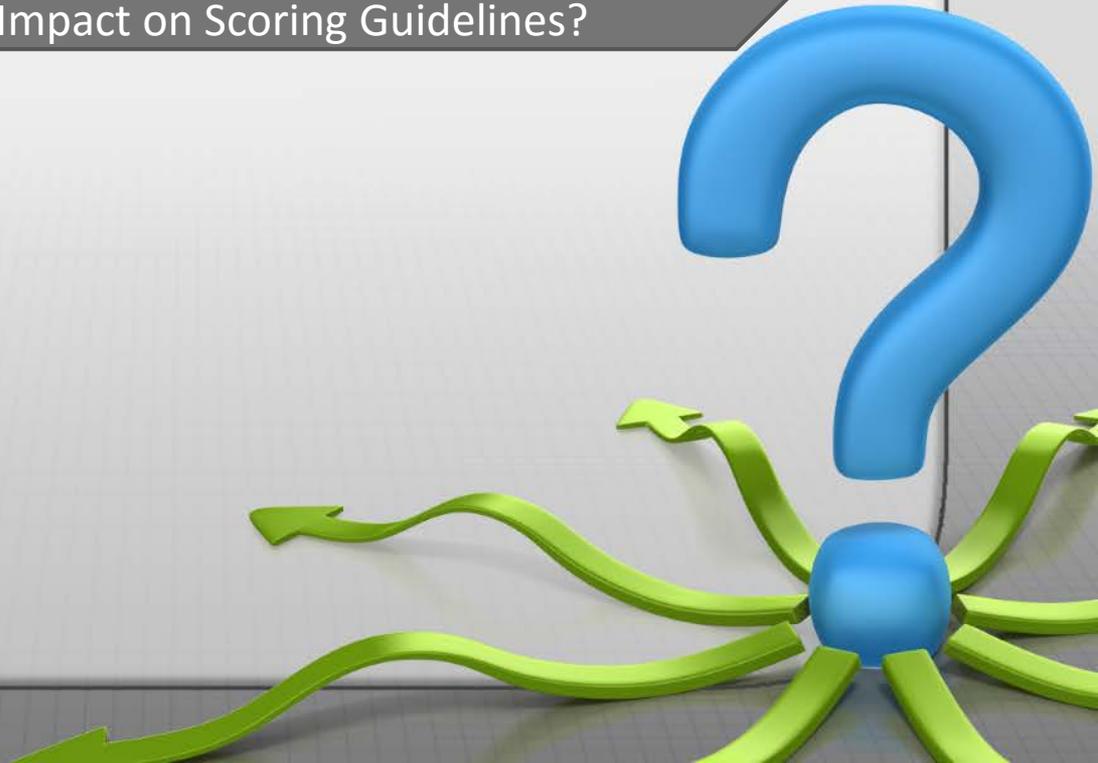
Establish New VCCs for Larceny with \$500 Threshold?

VCC

Establish VCCs for Weapons and Vandalism Offenses Punishable as Murder?

Manual

Include Statement on the Change in the Larceny Threshold & Impact on Scoring Guidelines?



# Add VCCs for Crimes Punished as Murder Not Under Art. 1 Homicide, §§ 18.2-30 — 18.2-37

Current Policy: Use the VCC for the type of homicide conviction. Include the statute for both the underlying offense and the homicide offense.

## Known Statutes:

§ 18.2-40 Lynching deemed murder (Add 38 VCCs\*)

§ 18.2-45 Persons suffering death from mob attempting to lynch  
Shall be guilty of murder, shall be punished as provided in Article 1 (§ 18.2-30 et seq.)

§ 18.2-154 Shooting at or throwing missiles., at train, car, etc. (Add 3 VCCs\*)  
A homicide that is willful, deliberate, and premeditated is punishable as murder in the first degree.  
A malicious shooting or throwing resulting in death is punishable as murder in the second degree.  
Death resulting from an unlawful act is punishable as involuntary manslaughter. (VAN)

§ 18.2-279 Discharging firearms or missiles within or at building (Add 3 VCCs\*)  
(Willful/Deliberate/Premeditated) The homicide is punishable as murder in the first degree.  
(Malice) In the event of death, the crime is punishable as murder in the second degree.  
(Without Malice) In the event of death, the crime is punishable as involuntary manslaughter. (WPN)

\* VCC Would have the MUR prefix



Title 18.2 Crimes and Offenses Generally  
Chap. 4 Crimes Against the Person, §§ 18.2-30 — 18.2-76.2  
Art. 2 Crimes by Mobs, §§ 18.2-38 — 18.2-46

**§ 18.2-40. Lynching deemed murder.** — Every lynching shall be deemed murder. Any and every person composing a mob and any and every accessory thereto, by which any person is lynched, shall be guilty of murder, and upon conviction, shall be punished as provided in Article 1 (§ 18.2-30 et seq.) of this chapter. (Code 1950, § 18.1-29; 1960, c. 358; 1975, cc. 14, 15.)

Title 18.2 Crimes and Offenses Generally  
Chap. 4 Crimes Against the Person, §§ 18.2-30 — 18.2-76.2  
Art. 2 Crimes by Mobs, §§ 18.2-38 — 18.2-46

**§ 18.2-45. Persons suffering death from mob attempting to lynch another person.** — Every person suffering death from a mob attempting to lynch another person shall come within the provisions of this article, and his personal representative shall be entitled to relief in the same manner and to the same extent as if he were the originally intended victim of such mob. (Code 1950, § 18.1-34; 1960, c. 358; 1975, cc. 14, 15.)

Title 18.2 Crimes and Offenses Generally

Chap. 5 Crimes Against Property, §§ 18.2-77 — 18.2-167.1

Art. 8 Offenses Relating to Railroads and Other Utilities, §§ 18.2-153 — 18.2-167.1

**§ 18.2-154. Shooting at or throwing missiles, etc., at train, car, vessel, etc.; penalty.** — Any person who maliciously shoots at, or maliciously throws any missile at or against, any train or cars on any railroad or other transportation company or any vessel or other watercraft, or any motor vehicle or other vehicles when occupied by one or more persons, whereby the life of any person on such train, car, vessel, or other watercraft, or in such motor vehicle or other vehicle, may be put in peril, is guilty of a Class 4 felony. In the event of the death of any such person, resulting from such malicious shooting or throwing, the person so offending is guilty of murder in the second degree. However, if the homicide is willful, deliberate, and premeditated, he is guilty of murder in the first degree.

If any such act is committed unlawfully, but not maliciously, the person so offending is guilty of a Class 6 felony and, in the event of the death of any such person, resulting from such unlawful act, the person so offending is guilty of involuntary manslaughter.

If any person commits a violation of this section by maliciously or unlawfully shooting, with a firearm, at a conspicuously marked law-enforcement, fire, or emergency medical services vehicle, the sentence imposed shall include a mandatory minimum term of imprisonment of one year to be served consecutively with any other sentence. (Code 1950, § 18.1-152; 1960, c. 358; 1975, cc. 14, 15; 1990, c. 426; 2004, c. 461; 2005, c. 143; 2013, cc. 761, 774; 2015, cc. 502, 503.)

Title 18.2 Crimes and Offenses Generally

Chap. 7 Crimes Involving Health and Safety, §§ 18.2-247 — 18.2-324.1

Art. 4 Dangerous Use of Firearms or Other Weapons, §§ 18.2-279 — 18.2-287.4

**§ 18.2-279. Discharging firearms or missiles within or at building or dwelling house; penalty.** — If any person maliciously discharges a firearm within any building when occupied by one or more persons in such a manner as to endanger the life or lives of such person or persons, or maliciously shoots at, or maliciously throws any missile at or against any dwelling house or other building when occupied by one or more persons, whereby the life or lives of any such person or persons may be put in peril, the person so offending is guilty of a Class 4 felony. In the event of the death of any person, resulting from such malicious shooting or throwing, the person so offending is guilty of murder in the second degree. However, if the homicide is willful, deliberate and premeditated, he is guilty of murder in the first degree.

If any such act be done unlawfully, but not maliciously, the person so offending is guilty of a Class 6 felony; and, in the event of the death of any person resulting from such unlawful shooting or throwing, the person so offending is guilty of involuntary manslaughter. If any person willfully discharges a firearm within or shoots at any school building whether occupied or not, he is guilty of a Class 4 felony. (Code 1950, §§ 18.1-66, 18.1-152; 1960, c. 358; 1975, cc. 14, 15; 1992, c. 738; 2005, c. 143.)

# Court of Appeals Cases

*Gregg v. Commonwealth*, 67 Va. App. 375, 796 S.E.2d 447 (2017)

IN THE COURT OF APPEALS OF VIRGINIA  
ARGUED AT ALEXANDRIA, VIRGINIA

CARROLL EDWARD GREGG, JR.  
v.  
COMMONWEALTH OF VIRGINIA

Record No. 0047-16-4  
Decided: February 28, 2017\*

Present: Judges Alston, Chafin and Senior Judge Annunziata

FROM THE CIRCUIT COURT OF FAUQUIER COUNTY, Herman A. Whisenant, Jr., Judge Designate

*Reversed and remanded.* [Page 377]

## COUNSEL

Blair D. Howard (Christopher T. Whelan; T. Brooke Howard, II; Howard, Morrison, Ross and Whelan; Howard & Howard, on briefs), for appellant.

Virginia B. Theisen, Senior Assistant Attorney General (Mark R. Herring, Attorney General, on brief), for appellee.

## OPINION

CHAFIN, J. — Following a jury trial, Carroll Edward Gregg, Jr. ("appellant") was convicted of common law involuntary manslaughter and involuntary manslaughter in violation of Code § 18.2-154, or "unlawfully shooting at an occupied vehicle wherein death resulted."<sup>1</sup> The jury fixed appellant's punishment at ten years in prison for each conviction, and the trial court sentenced appellant accordingly. On appeal, appellant argues that his [Page 378] rights against double jeopardy were violated because he was convicted of and sentenced for both statutory involuntary manslaughter and common law involuntary manslaughter. For the reasons that follow, we reverse the trial court's imposition of consecutive sentences for each offense and remand for proceedings consistent with this opinion.

### *Background*

On appellate review, we consider the evidence presented at trial in the light most favorable to the Commonwealth, the prevailing party below, and "accord [it] the benefit of all inferences fairly deducible from the evidence." *Riner v. Commonwealth*, 268 Va. 296, 303, 601 S.E.2d 555, 558 (2004).

So viewed, the evidence is as follows. On the night of June 4, 2014, L&K Recovery attempted to repossess a truck on behalf of appellant's creditors pursuant to a repossession order. Junior Montero Sanchez ("Sanchez"), an employee of L&K Recovery, drove a tow truck to appellant's home. Alex Marin ("Marin"), also employed by L&K Recovery, drove a separate vehicle to that location. The two men verified the VIN number on the truck and then connected it to the tow truck.

When Marin used a lockout tool to open the door of the truck, its alarm system was activated. Marin heard a man yell out the window, "You better get the F out of here." Sanchez drove the tow truck down the driveway, with Marin following in the other vehicle, and stopped at the end of the driveway to check his GPS for directions. As Sanchez was turning out of the driveway, Marin heard "a loud bang, and right after that, [he] heard [Sanchez] screaming." He then "[saw Sanchez] throw his hands up and . . . [slump] over the steering wheel, and . . . the tow truck going into the ditch."

When Sergeant Darrell Shores spoke with appellant, he stated that he had accidentally shot the tow truck driver. Appellant stated that he "shot [at the tow truck], then he fell, then he shot again." He also stated that "[repossession teams] should not be allowed to do this in the middle of the night." [Page 379]

Appellant was charged with murder, without express designation of degree, use of a firearm in the commission of murder, and involuntary manslaughter by shooting into an occupied vehicle causing death in violation of Code § 18.2-154. Appellant moved to dismiss the indictment, contending that convictions of both the homicide offenses would violate the Double Jeopardy Clause. Specifically, appellant argued that the charges were not separate offenses under *Blockburger v. United States*, 284 U.S. 299 (1932). Appellant also argued that the legislature had not established that it intended to impose separate punishments for each offense when they were based on the same underlying conduct. The trial court heard argument on the motion and withheld its ruling "until after the determination of guilt or innocence by the jury."

## VIRGINIA:

*In the Court of Appeals of Virginia on Thursday the 19th day of December, 2013.*

Daniel Harmon-Wright, s/k/a  
Daniel W. Harmon-Wright,

Appellant,

against Record No. 0990-13-4  
Circuit Court Nos. CR12000131-01 through CR12000131-03

Commonwealth of Virginia,

Appellee.

From the Circuit Court of Culpeper County

Per Curiam

This petition for appeal has been reviewed by a judge of this Court, to whom it was referred pursuant to Code § 17.1-407(C), and is denied in part and dismissed in part for the following reasons:

I. Appellant was convicted of voluntary manslaughter, involuntary manslaughter by unlawfully shooting into an occupied vehicle, and unlawfully shooting into an occupied vehicle.

Appellant filed his petition for appeal on September 18, 2013. On September 27, 2013, the Clerk's office notified appellant that his petition did not comply with Rule 5A:12, governing petitions for appeal. Notably, the Clerk's office informed appellant that "[o]ne or more of the assignments of error contained in the petition is/are stated in a manner that appears to be insufficient." The Clerk's office allowed appellant ten days to amend his petition. See *Whitt v. Commonwealth*, 61 Va. App. 637, 655, 739 S.E.2d 254, 263 (2013) (*en banc*) (holding that a party may amend his assignments of error).

Appellant filed an amended petition on October 7, 2013. However, as his first assignment of error in his amended petition for appeal, appellant contends that the trial court erred by denying his motion for a bill of particulars. Appellant had not challenged the denial of his motion for a bill of particulars in his original petition and is prohibited from now raising that issue.

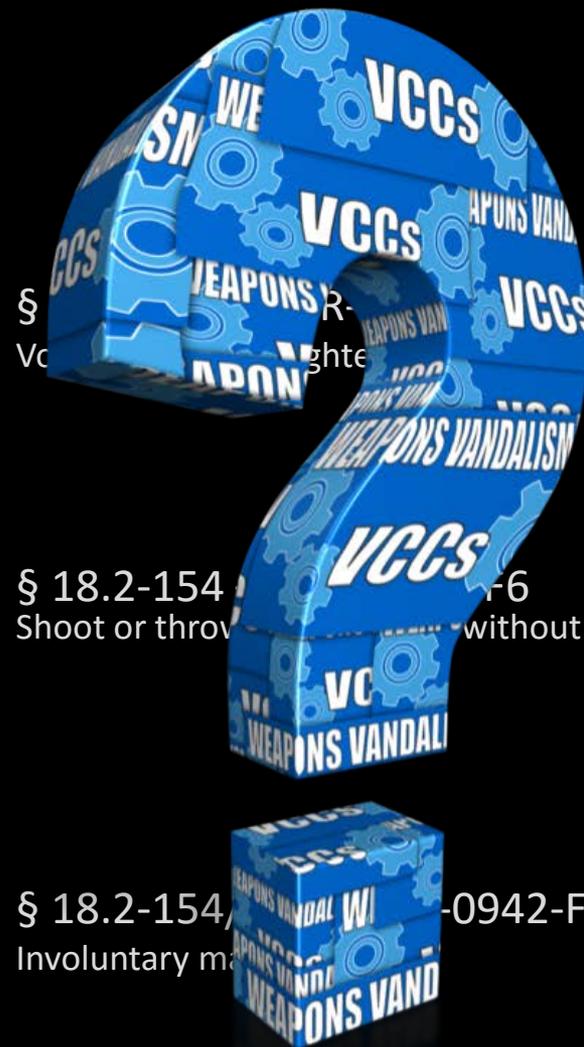
# Court Management System

CHARGE	HEAR DT	DISP
MANSLAUGHTER: VO	062513	G
UNLAW SHOOT AT O	062513	G
UNLAW SHOOT@MV-D	062513	G
USE FIREARM IN F	012913	NG
MANSLAUGHTER: IN	052912	NTB
UNLAW SHOOT/THRW	052912	NTB
SHOOT@OCCUPIED M	052912	NTB
USE FIREARM IN F	052912	NIP
MANSLAUGHTER: VO	062513	G
UNLAW SHOOT AT O	062513	G
UNLAW SHOOT@MV-D	062513	G
USE FIREARM IN F	012913	NG

DISP: CD G DT 050213 CONC TJ PRSNT Y CCRE T 051713  
 ACHRG: MANSLAUGHTER: VOLUNTARY CODE 18.2-35 MD - C 5 B FM F  
 J/P/T J SENT: 00Y12M000D SUSP 00Y00M000D C/S S L/D VCC MUR0944F5  
 FMS FINE \_\_\_\_\_ CMS SUSP \_\_\_\_\_ F/C PD \_\_\_\_\_ M COS -  
 FMS COSTS \$11,132.00 PROG \_\_\_\_\_ PROB: TYPE U TIME 10Y00M000D R/S - DIC -  
 OL: LOSS 00Y00M000D C/S SUR RES \_\_\_\_\_ STRT \_\_\_\_\_ END \_\_\_\_\_ DMV -  
 CC1379 - VASAP - REST: PD - AMT \_\_\_\_\_ APPLD 000000 ENDED # -  
 N=NXT CSE H=H/D I/U F=FWD PGE L=PAST HEAR V=DMV BRW Y=SP  
 X=NME IDX U=CSE I/U D=DSP PRV S=HEAR SRCH W=STAT BRW F9=REMRKS

DISP: CD G DT 050213 CONC TJ PRSNT Y CCRE T 051713  
 ACHRG: UNLAW SHOOT AT OCCUPIED MV CODE 18.2-154 MD - C 6 B FM F  
 J/P/T J SENT: 00Y12M000D SUSP 00Y00M000D C/S S L/D VCC VAN2940F6  
 FMS FINE \_\_\_\_\_ CMS SUSP \_\_\_\_\_ F/C PD \_\_\_\_\_ M COS -  
 FMS COSTS \$395.00 PROG \_\_\_\_\_ PROB: TYPE U TIME 10Y00M000D R/S - DIC -  
 OL: LOSS 00Y00M000D C/S SUR RES \_\_\_\_\_ STRT \_\_\_\_\_ END \_\_\_\_\_ DMV -  
 CC1379 - VASAP - REST: PD - AMT \_\_\_\_\_ APPLD 000000 ENDED # -  
 N=NXT CSE H=H/D I/U F=FWD PGE L=PAST HEAR V=DMV BRW Y=SP  
 X=NME IDX U=CSE I/U D=DSP PRV S=HEAR SRCH W=STAT BRW F9=REMRKS

DISP: CD G DT 050213 CONC TJ PRSNT Y CCRE R 051713  
 ACHRG: UNLAW SHOOT@MV-DEATH/INV MNSL CODE 18.2-154/36 MD - C 5 B 0 FM F  
 J/P/T J SENT: 00Y12M000D SUSP 00Y00M000D C/S S L/D VCC MUR0942F5  
 FMS FINE \_\_\_\_\_ CMS SUSP \_\_\_\_\_ F/C PD \_\_\_\_\_ M COS -  
 FMS COSTS \$395.00 PROG \_\_\_\_\_ PROB: TYPE U TIME 10Y00M000D R/S - DIC -  
 OL: LOSS 00Y00M000D C/S SUR RES \_\_\_\_\_ STRT \_\_\_\_\_ END \_\_\_\_\_ DMV -  
 CC1379 - VASAP - REST: PD - AMT \_\_\_\_\_ APPLD 000000 ENDED # -  
 N=NXT CSE H=H/D I/U F=FWD PGE L=PAST HEAR V=DMV BRW Y=SP  
 X=NME IDX U=CSE I/U D=DSP PRV S=HEAR SRCH W=STAT BRW F9=REMRKS



§ 18.2-154.1-6  
 Shoot or throw without malice

§ 18.2-154.1-0942-F5  
 Involuntary manslaughter

# Requested Decisions



VCC

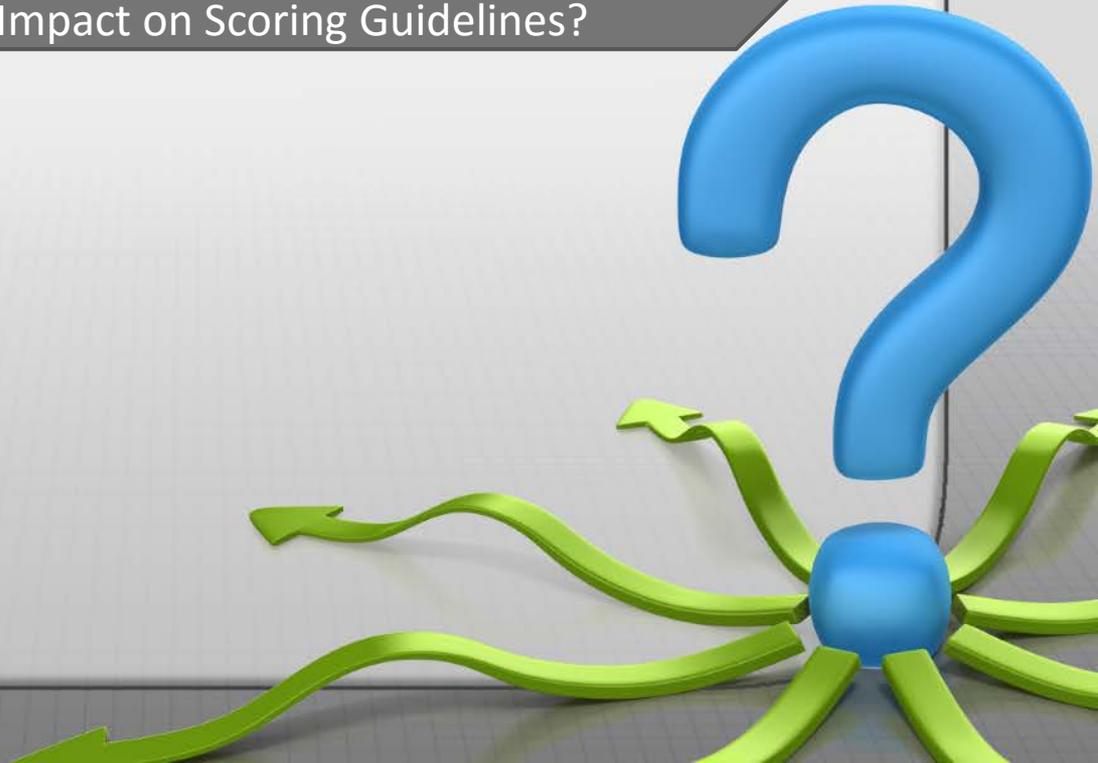
Establish New VCCs for Larceny with \$500 Threshold?

VCC

Establish VCCs for Offenses Punishable as Murder?

Manual

Include Statement on the Change in the Larceny Threshold & Impact on Scoring Guidelines?



## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 18.2-23, 18.2-80, 18.2-81, 18.2-95 through 18.2-97, 18.2-102, 18.2-103,*  
 3 *18.2-108.01, 18.2-145.1, 18.2-150, 18.2-152.3, 18.2-162, 18.2-181, 18.2-181.1, 18.2-182, 18.2-186,*  
 4 *18.2-186.3, 18.2-187.1, 18.2-188, 18.2-195, 18.2-195.2, 18.2-197, 18.2-340.37, 19.2-289, 19.2-290,*  
 5 *19.2-386.16, and 29.1-553 of the Code of Virginia, relating to grand larceny and certain property*  
 6 *crimes; threshold.*

7 [H 1550]  
 8 Approved

9 Be it enacted by the General Assembly of Virginia:

10 1. That §§ 18.2-23, 18.2-80, 18.2-81, 18.2-95 through 18.2-97, 18.2-102, 18.2-103, 18.2-108.01,  
 11 18.2-145.1, 18.2-150, 18.2-152.3, 18.2-162, 18.2-181, 18.2-181.1, 18.2-182, 18.2-186, 18.2-186.3,  
 12 18.2-187.1, 18.2-188, 18.2-195, 18.2-195.2, 18.2-197, 18.2-340.37, 19.2-289, 19.2-290, 19.2-386.16, and  
 13 29.1-553 of the Code of Virginia are amended and reenacted as follows:

14 § 18.2-23. **Conspiring to trespass or commit larceny.**

15 A. If any person shall conspire, confederate or combine with another or others in the Commonwealth  
 16 to go upon or remain upon the lands, buildings or premises of another, or any part, portion or area  
 17 thereof, having knowledge that any of them have been forbidden, either orally or in writing, to do so by  
 18 the owner, lessee, custodian or other person lawfully in charge thereof, or having knowledge that any of  
 19 them have been forbidden to do so by a sign or signs posted on such lands, buildings, premises or part,  
 20 portion or area thereof at a place or places where it or they may reasonably be seen, he shall be deemed  
 21 guilty of a Class 3 misdemeanor.

22 B. If any person shall conspire, confederate or combine with another or others in the Commonwealth  
 23 to commit larceny or counsel, assist, aid or abet another in the performance of a larceny, where the  
 24 aggregate value of the goods or merchandise involved is ~~more than \$200~~ \$500 or more, he is guilty of a  
 25 felony punishable by confinement in a state correctional facility for not less than one year nor more than  
 26 20 years. The willful concealment of goods or merchandise of any store or other mercantile  
 27 establishment, while still on the premises thereof, shall be prima facie evidence of an intent to convert  
 28 and defraud the owner thereof out of the value of the goods or merchandise. A violation of this  
 29 subsection constitutes a separate and distinct felony.

30 C. Jurisdiction for the trial of any person charged under this section shall be in the county or city  
 31 wherein any part of such conspiracy is planned, or in the county or city wherein any act is done toward  
 32 the consummation of such plan or conspiracy.

33 § 18.2-80. **Burning or destroying any other building or structure.**

34 If any person maliciously, or with intent to defraud an insurance company or other person, burn, or  
 35 by the use of any explosive device or substance, maliciously destroy, in whole or in part, or cause to be  
 36 burned or destroyed, or aid, counsel or procure the burning or destruction of any building, bridge, lock,  
 37 dam or other structure, whether the property of himself or of another, at a time when any person is  
 38 therein or thereon, the burning or destruction whereof is not punishable under any other section of this  
 39 chapter, he shall be guilty of a Class 3 felony. If he commits such offense at a time when no person is  
 40 in such building, or other structure, and such building, or other structure, with the property therein, be of  
 41 the value of \$200, \$500 or more, he shall be guilty of a Class 4 felony, and if it and the property  
 42 therein be of less value, he shall be guilty of a Class 1 misdemeanor.

43 § 18.2-81. **Burning or destroying personal property, standing grain, etc.**

44 If any person maliciously, or with intent to defraud an insurance company or other person, set fire to  
 45 or burn or destroy by any explosive device or substance, or cause to be burned, or destroyed by any  
 46 explosive device or substance, or aid, counsel, or procure the burning or destroying by any explosive  
 47 device or substance, of any personal property, standing grain or other crop, he shall, if the thing burnt or  
 48 destroyed be of the value of \$200 \$500 or more, be guilty of a Class 4 felony; and if the thing burnt or  
 49 destroyed be of less value, he shall be guilty of a Class 1 misdemeanor.

50 § 18.2-95. **Grand larceny defined; how punished.**

51 Any person who (i) commits larceny from the person of another of money or other thing of value of  
 52 \$5 or more, (ii) commits simple larceny not from the person of another of goods and chattels of the  
 53 value of \$200 \$500 or more, or (iii) commits simple larceny not from the person of another of any  
 54 firearm, regardless of the firearm's value, shall be guilty of grand larceny, punishable by imprisonment  
 55 in a state correctional facility for not less than one nor more than ~~twenty~~ 20 years or, in the discretion  
 56 of the jury or court trying the case without a jury, be confined in jail for a period not exceeding twelve

ENROLLED

HIM1550ER

Impact Guidelines Scores:  
 Larceny Threshold \$200 to \$500

# Impact on Guidelines Scores

**Larceny Section A** Offender Name: \_\_\_\_\_

◆ **Primary Offense** (Notes for attempted/conspired offenses are in parentheses)

A. Attempted or conspired larceny (1 count) (1)

B. Statutory maximum penalty equals 5 years  
1 count ..... 1  
2 counts ..... 2  
3 counts ..... 3

C. Statutory maximum penalty equals 10 years (1 count) ..... 3

D. Grand larceny auto  
1 count ..... 5  
2 counts ..... 7  
3 counts ..... 10

E. Grand larceny from person  
1 count ..... 4  
2 counts ..... 11

F. Grand larceny of a firearm (1 count) ..... 1

G. Failure of bailee to return animal, aircraft, vehicle or boat (1 count) ..... 4

H. Larceny of bank notes, checks or any book of accounts. Any other larceny offense with maximum penalty of 20 years  
1 count ..... 2  
2-3 counts ..... 4  
4 counts ..... 6

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above  
Years: 5-11 ..... 1 34-44 ..... 4  
12-22 ..... 2 45 or more ..... 5  
23-33 ..... 3

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts  
Years: Less than 1 ..... 0 23-33 ..... 3  
1-11 ..... 1 34-44 ..... 4  
12-22 ..... 2 45 or more ..... 5

◆ **Prior Convictions/Adjudications** Total the maximum penalties for the 5 most recent and serious prior record events  
Years: Less than 2 ..... 0 21-36 ..... 3  
2-11 ..... 1 37 or more ..... 4  
12-20 ..... 2

◆ **Prior Felony Larceny Convictions/Adjudications**  
Number of Counts: 1 ..... 2  
2-3 ..... 3  
4 or more ..... 4

◆ **Other Prior Felony Property Convictions/Adjudications**  
Number of Counts: 5 or more ..... 1  
2 ..... 0

◆ **Prior Felony Convictions/Adjudications Against Person**  
Number of Counts: 1 ..... 1  
2 or more ..... 2

◆ **Prior Misdemeanor Convictions/Adjudications (Excludes Traffic)**  
Number of Counts: 1-4 ..... 1  
5-8 ..... 2  
9 or more ..... 3

◆ **Prior Incarcerations/Commitments** If YES, add 5 ..... 0

◆ **Prior Juvenile Record** If YES, add 1 ..... 0

◆ **Legally Restrained at Time of Offense**  
None ..... 0  
Other than parole/post-release, supervised probation or CCCA ..... 1  
Parole/post-release, supervised probation or CCCA ..... 2

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS **EMBEZZLEMENT** (§ 18.2-111)

◆ **Amount of Embezzlement**  
Amount: Less than \$10,000 ..... 0  
\$10,000-\$19,999 ..... 3  
\$20,000-\$74,999 ..... 6  
\$75,000-\$119,999 ..... 9  
\$120,000 or more ..... 14

**Total Score** If total is 15 or less, go to Section B. If total is 16 or more, go to Section C.

## Larceny (Non-Embezzlement) Dollar Value of Items

Less Than \$200	1.5%
\$200-499	17.2%
\$500- 999	19.5%
\$1,000-2,499	14.4%
\$2,500-4,999	7.8%
\$5,000-9,999	6.7%
\$10,000 or More	4.7%
Unknown	28.2%

Source: 2015 Annual Report

2015: Approximately # of Cases: 6,000 larceny and 1,200 fraud convictions  
2018: Estimated Impact: 1,200 larceny misd. 240 fraud misd.

# Impact on Guidelines Scores

**Larceny Section A** Offender Name: \_\_\_\_\_

(Notes for attempted/conspired offenses are in parentheses)

◆ **Primary Offense**

A. Attempted or conspired larceny (1 count)	(1)	
B. Statutory maximum penalty equals 5 years		
1 count	1	
2 counts	4	
3 counts	7	
C. Statutory maximum penalty equals 10 years (1 count)	3	
D. Grand larceny auto		
1 count	5	
2 counts	7	
3 counts	10	
E. Grand larceny from person		
1 count	4	
2 counts	11	
F. Grand larceny of a firearm (1 count)	1	
G. Failure of bailee to return animal, aircraft, vehicle or boat (1 count)	4	
H. Larceny of bank notes, checks or any book of accounts. Any other larceny offense with maximum penalty of 20 years		
1 count	2	
2-3 counts	4	
4 counts	6	

**Score**

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above

Years: 5 - 11	1	34 - 44	4	
12 - 22	2	45 or more	5	0
23 - 33	3			

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts

Years: Less than 1	0	23 - 33	3	
1 - 11	1	34 - 44	4	0
12 - 22	2	45 or more	5	

◆ **Prior Convictions/Adjudications** Total the maximum penalties for the 5 most recent and serious prior record events

Years: Less than 2	0	21 - 36	3	
2 - 11	1	37 or more	4	0
12 - 20	2			

◆ **Prior Felony Larceny Convictions/Adjudications**

Number of Counts: 1	2			
2 - 3	3			0
4 or more	4			

◆ **Other Prior Felony Property Convictions/Adjudications**

Number of Counts: 5 or more	1			0
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◆ **Prior Felony Convictions/Adjudications Against Person**

Number of Counts: 1	1			0
2 or more	2			

◆ **Prior Misdemeanor Convictions/Adjudications (Excludes Traffic)**

Number of Counts: 1 - 4	1			0
5 - 8	2			
9 or more	3			

◆ **Prior Incarcerations/Commitments** If YES, add 5  0

◆ **Prior Juvenile Record** If YES, add 1  0

◆ **Legally Restrained at Time of Offense**

None	0			
Other than parole/post-release, supervised probation or CCCA	1			
Parole/post-release, supervised probation or CCCA	2			0

**SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS 16 EMBEZZLEMENT (§ 18.2-111)**

◆ **Amount of Embezzlement**

Amount: Less than \$10,000	0			
\$10,000-\$19,999	3			
\$20,000-\$74,999	6			
\$75,000-\$119,999	9			
\$120,000 or more	14			

**Total Score** If total is 15 or less, go to Section B. If total is 16 or more, go to Section C.

Larceny/Section A

## Missing or Incomplete Dispositions:

As a general rule, if an ambiguous entry on a prior record document cannot be reliably resolved, the guidelines user treats the information in a way that gives the benefit of doubt to the offender. If any prior record disposition information is missing, the guidelines user assumes that no conviction occurred. Likewise, if the existing information is unclear as to whether an offense at conviction is a felony in Virginia or a misdemeanor, the guidelines user assumes that the offense was a misdemeanor. If the seriousness level is unclear, but it is known that the conviction is similar to a felony in Virginia, score the conviction at the lowest seriousness level for that offense in the *Code of Virginia*.

Source: General Instructions, page 25



# Impact on Guidelines Scores

Question 1: Sentencing guidelines are based on historical sentencing patterns. In Fiscal Year 2019, the type of larceny offenses before the court will be slightly different than those used to develop the guidelines. A significant subset of the cases (i.e., those with larcenies valued between \$200 to \$499) used to develop guidelines will no longer be scored as primary offenses on the guidelines. Do the guidelines still represent the new population and historical sentencing or are there other guidelines factors needed?

Question 2: Preparers score prior record factors based on the current penalty structure. Any prior felony larceny related offense with an assigned value of less than \$500 will now be scored as a Class 1 misdemeanor. If the value is unknown, those convictions will also be scored as Class 1 misdemeanors. It is believed that although prior record factors are scored based on penalty, the factors are really proxies for measuring criminal behavior. Are the current prior record factors sufficient to reflect the new dynamic?



# Proposed Statement for Manual



Changes to the felony threshold from \$200 to \$500 for larceny and related offenses will impact Sentencing Guidelines in two ways. First, based on previous studies, it is estimated that at least twenty percent of the larceny and fraud offenses will now be classified as misdemeanors and no longer covered by sentencing guidelines. As a result, typical larceny or fraud guidelines case sentenced in Circuit Courts in 2018 may be different from the **historical cases** used to develop the guidelines in effect today.

Second, prior record is scored based on Virginia's current penalty structure. As of July 1, 2018, when scoring factors like "Prior Convictions / Adjudications," "Prior Felony Larceny Convictions/Adjudications," "Other Prior Felony Property Convictions/Adjudications," or "Prior Misdemeanor Convictions/Adjudications" the value of the property must be determined. When the value of the property is required to determine a felony designation, the preparer must determine the value of the property. In some cases, such as larceny of a firearm, the crime is a felony regardless of value. In other cases, if the preparer cannot determine that the prior felony convictions involved property valued at \$500 or more, the prior conviction must be scored as a misdemeanor. **Restitution can be used to establish a value**, but only if the restitution is at least \$500 and the previous conviction was for a felony in Virginia. Rules for converting out-of- state prior convictions remain the same, but the value must be at least \$500.

The Commission will continue to **monitor judicial sentencing for several years before determining if the larceny and fraud guidelines need to be modified** to better represent judicial sentencing across the Commonwealth. Information on felony and misdemeanor guidelines factors, in combination with departure reasons, will be used to assess possible changes. If deemed necessary, recommendation will be made in a future Annual Report and submitted for legislative review and approval.





# Requested Decisions

Thank You

