

### **Guidelines Must Be Reviewed Prior to Deferring or Taking a Sentence Under Advisement (§§ 18.2-251, 18.2-258.1, 19.2-298.02, and 19.2-303.6)**

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The 2023 General Assembly passed House Bill 2019, which clarifies that Guidelines must be reviewed in cases in which the court plans to defer disposition (as authorized by § 18.2-251, 18.2-258.1, 19.2-298.02, or 19.2-303.6.). Under § 19.2-298.01 of the Code of Virginia, discretionary Sentencing Guidelines are to be reviewed in all felony cases, other than Class 1 felonies. Per policy, the Guidelines Cover Sheet is prepared for the court in all felony cases, including Class 1 felonies. The Probation Officer or the attorney for the Commonwealth is required to present the appropriate Sentencing Guidelines worksheets and/or the Guidelines Cover Sheet before sentencing in all felony cases. The court must review and consider the suitability of the applicable Sentencing Guidelines before imposing sentence or deferring disposition as authorized by §§ 18.2-251, 18.2-258.1, 19.2-298.02, or 19.2-303.6. The court must state for the record that such review and consideration were made and the completed cover sheet and worksheets are then made a part of the record of the case and open for inspection. The 2023 legislation also specifies that the Circuit court clerk must submit Guidelines forms to the Commission in cases resulting in a deferred disposition.

### **The Virginia Crime Code (VCC) is Modified to Reflect a Violation of a Deferred Disposition/ Sentence. (§§ 18.2-251, 18.2-258.1, 19.2-298.02 and 19.2-303.6)**

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The Virginia Crime Codes (VCC) system utilizes a number of modifiers in the eighth character position to indicate specific case characteristics. The letters “A” (Attempt) and “C” (Conspiracy) are penalty modifiers and are used in place of the “F” for attempted and conspired crimes. For example, the offense of “malicious bodily injury to a law enforcement officer” has a VCC of ASL-1326-F9, which would change to ASL-1326-A9 for an attempt or ASL-1326-C9 for a conspiracy to commit this specific crime. The letter “L” is also a penalty modifier and is used in place of the “F” when a defendant is convicted under § 19.2-297.1 (Virginia’s “three-strikes” statute).

For example, the offense of carjacking has a VCC of ROB-1225-F9, which would change to ROB-1225-L9 for a conviction under § 19.2-297.1.

All VCC modifiers are shown in the table below. As of July 1, 2023, a new modifier was added to the VCC system to identify convictions that are the result of violations of the conditions of deferred dispositions (as authorized in §§ 18.2-251, 18.2-258.1, 19.2-298.02, or 19.2-303.6). The eighth character position is changed from an “F” to a “D” if the individual is convicted of the crime after failing to satisfy the terms and conditions of a deferred disposition. This designation of deferred disposition failures must be used in all criminal justice data systems that use the VCCs and would make the circumstances of the conviction clear to all criminal justice stakeholders.

Example:

**NAR-3022-F5** Possession of a Schedule I/II drug

**NAR-3022-D5** Possession of a Schedule I/II drug conviction following failure on deferred disposition. The old VCCs for violation of the First Offender statutes, NAR-3073-F9, NAR-3074-M9 and NAR-3096-F6, are no longer used.

#### **Virginia Crime Codes (VCCs) – Offense Modifiers**

A = Attempt (Felonies Only)

C = Conspiracy (Felonies Only)

D = Violation of a Deferred Disposition (§§ 18.2-251, 18.2-258.1, 19.2-298.02, and 19.2-303.6)

F = Felony Offense

J = Adult sentenced for Juvenile offense (§ 16.1-284)

L = Life Without Parole (§ 19.2-297.1)

M = Misdemeanor Offense

O = Local Ordinance

S = Special Penalty Structure

T = Solicitation to commit a felony (§ 18.2-29)

V = Solicitation to commit a felony-adult solicits juvenile (§ 18.2-29)

X = Subsequent Violent Sexual Assault (§18.2-67.5:3 and § 18.2-67.5:2)

Y = Commitment of serious juvenile offender (§ 16.1-285.1)