



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1296

(Patron – DeSteph)

LD #: 23100608

Date: 12/12/2022

Topic: Felony larceny threshold and punishment for second or third misdemeanor larceny

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$14,659,486 (299 beds)
- **Local Adult Correctional Facilities:**
At least \$3,030,450 (205 beds)
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
Cannot be determined *
- **Juvenile Detention Facilities:**
Cannot be determined *

* Provided by the Department of Juvenile Justice

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposal amends numerous sections of the *Code* to reduce the felony threshold for larceny and many other property crimes from \$1,000 to \$500. Under the proposal, some offenses punishable as misdemeanors under current *Code* would be felonies that could result in a state-responsible (prison) sentence.

Between 1980 and 2018, Virginia's felony larceny threshold was \$200, meaning that thefts involving \$200 or more were subject to felony prosecution. The 2018 General Assembly passed legislation to increase the felony larceny threshold from \$200 to \$500. In 2020, the General Assembly further increased the threshold to \$1,000. Many offenses in the *Code of Virginia* are "deemed larceny" (punishable in the same manner as larceny) or were otherwise affected by changes in the felony larceny threshold.

The proposal also adds § 18.2-104.01 to re-establish enhanced penalties for second and third convictions of misdemeanor larceny. Under the proposal, a second conviction for misdemeanor larceny is punishable by a jail term of 30 days to 12 months, while a third or subsequent misdemeanor larceny conviction is punishable as a Class 6 felony. These penalties were in effect prior to July 1, 2021. Legislation adopted by the 2021 General Assembly eliminated these enhanced penalties from the *Code* as of July 1, 2021.

Analysis:

Virginia's criminal justice data systems do not capture in all cases the value of items taken in property crimes. In 2014-2015, the Sentencing Commission conducted a special study of felony larceny and fraud offenses that included a case-by-case file review to identify the total value of goods or financial benefit

associated with each sentencing event. The Commission found that, among felony larceny and fraud offenses involving \$500 or more, approximately 21% involved a value between \$500 and \$999. For nearly one-third of the cases in the study, however, a specific value could not be determined. Among cases in which the specific amount could be identified (i.e., excluding the cases with unknown values), an estimated 30.8% of the sentencing events involved a value between \$500 and \$999.

According to fiscal year (FY) 2020 and FY2021 Sentencing Guidelines data, when the specified penalties were last in effect, a felony conviction for petit larceny third offense (§ 18.2-104.01) was the primary (or most serious) offense in 2,376 sentencing events. More than half of the offenders (58.1%) were sentenced to a local-responsible (jail) term for which the median sentence was 3.0 months. Another 21.4% of the offenders received a state-responsible (prison) term with a median sentence of 1.3 years. The remaining 20.5% of offenders did not receive an active term of incarceration to serve after sentencing. In the vast majority of these sentencing events (92.7%), the offender did not have any other felony convictions accompanying the petit larceny third offense.

Based on FY2020 and FY2021 General District Court Case Management System (CMS) data, 1,732 offenders were convicted of a misdemeanor for petit larceny second offense (§ 18.2-104.01). For the 58.7% of offenders who were given a jail term to serve, the median sentence was 20 days.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal would re-establish the enhanced penalties for second and third misdemeanor larceny convictions that were eliminated from the *Code*, effective July 1, 2021. Some offenders who would be convicted of misdemeanors under current law could be convicted of a Class 6 felony for petit larceny third offense if they have the requisite number of prior offenses. Compared to current law, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth above what would otherwise be needed. The impact for this aspect of the proposal is estimated to be 299 beds by FY2029. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$14,659,486. The impact of reducing the felony threshold for grand larceny and many other property crimes from \$1,000 to \$500 cannot be included here because data are insufficient to identify individuals who would be eligible for felony prosecution under both aspects of the proposal (i.e., there is no clear way to avoid double-counting these individuals in the impact estimate).

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY24	FY25	FY26	FY27	FY28	FY29
188	276	290	295	299	299

Local adult correctional facilities. In re-establishing the enhanced penalties for second and third misdemeanor larceny convictions, some offenders may be convicted a Class 6 felony rather than a misdemeanor, or they may be convicted of a misdemeanor that carries a 30-day statutory minimum. As a result, some offenders may receive longer jail sentences and other offenders may be given a state prison sentence rather than a local-responsible (jail) sentence. The net effect of this aspect of the proposal is expected to increase the future need for jail beds. The impact on jail beds is estimated to be at least 205 beds by FY2029 (state costs: \$3,030,450; local costs: \$4,753,361). The impact of reducing the felony threshold for grand larceny and many other property crimes cannot be included due to insufficient data.

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY24	FY25	FY26	FY27	FY28	FY29
171	195	200	203	205	205

Adult community corrections resources. Because the proposal could result in felony convictions and subsequent supervision requirements for additional offenders (compared to current law), the proposal may

increase the need for state community corrections resources. For example, data revealed 2,376 sentencing events for petit larceny third offense over a two-year period prior to its repeal. It is not known how many of these offenders were already on supervised probation for other offenses; however, Sentencing Guidelines data suggest that judges ordered probation supervision for roughly two-thirds of the offenders convicted of petit larceny third. When supervision was ordered by the court, the median supervised probation term was one year. The *Code of Virginia* allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. The net impact of all aspects of the proposal on state community corrections resources and local community-based probation services cannot be estimated.

Virginia's Sentencing Guidelines. The Sentencing Guidelines currently cover many offenses that would be affected by the proposed reduction in the felony threshold for grand larceny and other property crimes. The Guidelines covered the felony for petit larceny third offense prior to its repeal in 2021. If the proposal is enacted, the Commission would likely restore the previous Guidelines recommendations for petit larceny third offense. The Commission would monitor sentencing patterns after enactment to determine if the Guidelines should be adjusted in order to provide judges with a more accurate benchmark of the typical, or average, case outcome.

Juvenile direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is at least \$14,659,486 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2022.
2. New cases resulting in state-responsible sentences were based on forecasts approved by the Secretary of Public Safety's Committee on Inmate Forecasting in 2022.
3. Cost per prison bed was assumed to be \$48,958 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***
4. Cost per jail bed was based on The Compensation Board's FY2021 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$40.39 per day or \$14,752 per year. The local cost was calculated by using the daily expenditure cost of \$107.81 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$63.35 per day or \$23,139 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

Assumptions relating to offenders

1. To estimate the number of offenders who may be affected by the proposed re-establishment of enhanced penalties for second and third misdemeanor larceny convictions, the Commission examined FY2020 felony sentencing events in which petit larceny third offense was the primary, or most serious, offense. The Commission then excluded 1) individuals who were convicted of any other felony in the same sentencing event and 2) individuals who had any other felony sentencing event that resulted in a prison sentence during the 12 months prior or the 12 months immediately following the sentencing event identified for analysis. This step isolated offenders who were most likely to be affected by the proposal.

2. It was assumed that the number offenders convicted of a felony for petit larceny third offense in the future would be similar to the number of such offenders identified during FY2020.
3. The impact of reducing the felony threshold for grand larceny and many other property crimes from \$1,000 to \$500 was not included because data are insufficient to identify individuals who would be eligible for felony prosecution under both aspects of the proposal (i.e., there is no clear way to avoid double-counting these individuals in the impact estimate).

Assumptions relating to sentencing and time served

1. The impact of the proposed legislation, which would be effective on July 1, 2022, is phased in to account for case processing time.
2. Offenders affected by the proposed re-establishment of enhanced penalties for second and third misdemeanor larceny convictions (convicted of misdemeanors under current law) were assumed to receive sentences similar to all offenders convicted of misdemeanor larceny during FY2020. This served as the baseline for estimating the impact of the proposed change.
3. Offenders affected by the proposal (who would be convicted felonies rather than misdemeanors) were assumed to receive sentences in the future similar to offenders sentenced during FY2020 for a felony conviction for petit larceny third offense.
4. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of February 28, 2020. At that time, felons could earn a maximum of 4.5 days for every 30 days served. Beginning July 1, 2022, most nonviolent felons were eligible for higher rates of earned sentence credits (up to 15 days for every 30 days served). To estimate the earning rates for larceny offenders affected by the proposed legislation, the Sentencing Commission examined the percentage of larceny offenders earning in each of the four levels of sentence credits that existed on February 28, 2020, and then applied those percentages to the four levels of sentence credits available for nonviolent felons as of July 1, 2022. For larceny offenses sentenced during the forecast horizon, the overall average rate of sentence credits earned by these individuals was estimated to be 22.8%.

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