



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 77 (Patron – Peake)

LD #: 24100896

Date: 12/27/2023

Topic: Punishment for fourth or subsequent misdemeanor larceny

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$9,032,291 (171 beds)
- **Local Adult Correctional Facilities:**
\$1,361,137 (92 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 adds § 18.2-104.01 to establish enhanced penalties for fourth or subsequent convictions of misdemeanor larceny. Under the proposal, a fourth or subsequent misdemeanor larceny conviction would be punishable as a Class 6 felony.¹ Prior to July 1, 2021, a second conviction for misdemeanor larceny was punishable by a jail term of 30 days to 12 months, while a third or subsequent misdemeanor larceny conviction was punishable as a Class 6 felony. Legislation adopted by the 2021 General Assembly eliminated these enhanced penalties from the *Code of Virginia* as of July 1, 2021.

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* are “deemed larceny” (punishable in the same manner as larceny) or were otherwise affected by changes in the felony larceny threshold. Therefore, many acts of larceny that would have been subject to felony prosecution in the past now are prosecuted as misdemeanors.

Analysis:

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 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

¹ Defendants convicted of the proposed felony defined in § 18.2-104.01 would be eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby offenders will serve a minimum of 67% of the sentence ordered by the court.

these sentencing events (92.7%), the offender did not have any other felony convictions accompanying the petit larceny third offense.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation would establish enhanced penalties (Class 6 felony) for fourth or subsequent misdemeanor larceny convictions. Some offenders who would be convicted of misdemeanors under current law could be convicted of a Class 6 felony for petit larceny fourth offense if they have the requisite number of prior offenses. Thus, some offenses currently punished as misdemeanors would become felonies under the proposal. Compared to current law, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be 171 beds statewide by FY2030. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$9,032,291.

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

FY25	FY26	FY27	FY28	FY29	FY30
105	153	164	168	170	171

Local adult correctional facilities. Under the proposal, offenders convicted of certain offenses will be convicted of felonies rather than misdemeanors. 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 impact on local-responsible (jail) beds is estimated to be 92 beds by FY2030 (state costs: \$1,361,137; local costs: \$2,134,989).

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

FY25	FY26	FY27	FY28	FY29	FY30
76	87	90	91	92	92

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. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. The net impact on state community corrections resources versus local community-based probation services cannot be estimated.

Virginia’s Sentencing Guidelines. The proposed felony would not be covered by the Sentencing Guidelines as the primary (most serious) offense in a case; however, such a conviction may augment the Guidelines recommendation (as an additional offense) if a covered offense is the most serious at sentencing. No immediate adjustment to the Guidelines would be necessary under the proposal. If the proposal is enacted, the Sentencing Commission in the future could conduct detailed analyses of sentencing patterns to determine the feasibility of adding the felony to the Guidelines system. The proposed felony would not be defined as violent under § 17.1-805(C) for the purposes of the Guidelines.

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, the estimated amount of the necessary appropriation is \$9,032,291 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 2023.
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 2023.
3. Cost per prison bed was assumed to be \$52,894 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 proposal, the Commission examined FY2022-FY2023 sentencing events in which offenders were convicted of misdemeanors for larceny or other offenses deemed punishable as larceny. The Commission then excluded 1) individuals who were convicted of any 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. The Commission examined prior criminal history data from FY2010-FY2021 to identify offenders whose current conviction would represent a fourth or subsequent misdemeanor conviction for larceny or an offense deemed larceny in the Code.

Assumptions relating to sentencing and time served

1. The impact of the proposed legislation, which would be effective on July 1, 2024, is phased in to account for case processing time.
2. Offenders affected by the proposal (convicted of misdemeanors under current law) were assumed to receive sentences similar to offenders convicted of misdemeanors for larceny or other offenses deemed punishable as larceny during FY2022-FY2023. This served as the baseline for estimating the impact of the proposed change.
3. Offenders affected by the proposal (who would be convicted of felonies rather than misdemeanors) were assumed to receive sentences in the future similar to offenders sentenced during FY2020-FY2021 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 September 30, 2023. 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, see § 53.1-202.3). For offenders convicted of felony larceny and sentenced during the forecast horizon, the overall average rate of sentence credits earned by these individuals was estimated to be 28.5%.

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