



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 107 (Patron – McGuire)

LD #: 22100960

Date: 1/3/2022

Topic: Felony larceny threshold; larceny of catalytic converters

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$3,829,684 (105 beds)
- **Local Adult Correctional Facilities:**
At least \$771,642 (56 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. In § 18.2-96, the proposal establishes a mandatory minimum penalty of 10 days for petit larceny of a package delivered to a residence. The proposal also adds § 18.2-97.2 to make larceny of a catalytic converter from a motor vehicle a Class 6 felony regardless of the converter's value. Finally, the proposal increases the penalty for vandalizing a vehicle, aircraft, or boat (§ 18.2-146) from a Class 1 misdemeanor to a Class 6 felony if the violation results in damage of \$500 or more.

Between 1980 and 2018, Virginia's felony larceny threshold was \$200, meaning that thefts involving \$200 or more were subject to felony prosecution. By 2018, Virginia was tied with one other state as having the lowest felony larceny threshold in the nation. 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. Virginia's felony larceny threshold is now equivalent to the median felony threshold value for all 50 states. 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.

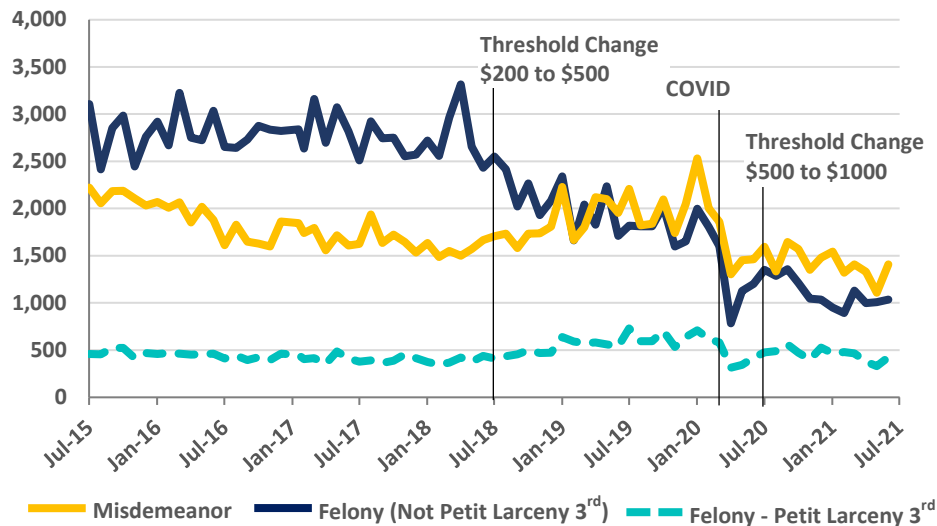
Analysis:

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.

Early data suggest that the number of felony charges for larceny and other offenses affected by the larceny threshold declined as the dollar threshold was increased by the General Assembly (Figure 1). By March 2020, however, COVID-19 began to impact Virginia and it is difficult to separate the pandemic's impact from other factors. At the same time, the proportion of charges filed as felonies has decreased compared to charges filed as misdemeanors or as petit larceny third offense. As an example, charges filed in Virginia's General District Courts are shown in Figure 2. In General District Court, felony charges (excluding felonies for petit larceny third offense) decreased from 54% in FY2018 to 32% in FY2021, while the proportion of misdemeanor and petit larceny third offense charges grew.

Figure 1
Charges in Virginia for Larceny and Other Offenses Affected
by the Felony Larceny Threshold (All Court Levels)¹



Source: Virginia Criminal Sentencing Commission analysis of the Supreme Court of Virginia's Case Management Systems (CMS) for the Circuit, General District and JDR Courts

¹ In order to avoid double-counting in this chart, charges filed in General District Court or JDR Court that were certified to the grand jury or otherwise transferred to Circuit Court were excluded (these charges will be counted in Circuit Court files). Similarly, appeals from General District and Juvenile & Domestic Relations Court were excluded. Circuit Court data do not include cases from Fairfax or Alexandria as clerks in those jurisdictions do not participate in the statewide Case Management System. Analysis of JDR Court data includes only adult offenders.

Figure 2
All Charges Filed in General District Court for Larceny and Other Offenses Affected
by the Felony Larceny Threshold²

General District Court Charges Filed ²	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021
Felony Larceny (Not Petit Larceny 3rd offense)	49%	53%	54%	41%	36%	32%
Felony for Petit Larceny 3rd Offense	9%	9%	9%	14%	15%	15%
Misdemeanor Larceny	42%	38%	37%	45%	48%	53%
Total	100.0%	100.0%	100.0%	Total	100.0%	100.0%
Number of Charges	55,325	50,210	47,890	45,411	42,581	23,962

Source: Virginia Criminal Sentencing Commission analysis of the Supreme Court of Virginia's Case Management Systems (CMS) for the General District Court

² General District Courts hold hearings for felony charges filed in those courts. Such felony charges may be nolle prossed, dismissed, reduced to misdemeanors, certified to the grand jury or otherwise transferred to Circuit Court.

When the felony larceny threshold increased from \$200 to \$500 and then to \$1,000, cases involving amounts below the new threshold that, in the past, had been prosecuted as felonies began to be prosecuted as misdemeanors. Thus, cases that remained felonies involved a higher dollar value, on average, compared to prior years. Given the higher average dollar value in felony cases, it was possible that sentencing patterns might begin to change. According to FY2016-FY2021 Sentencing Guidelines data, among defendants convicted of felony larceny (or other offense affected by threshold), the percentage who were given a state-responsible prison sentence (one year or more) did not increase as the felony threshold moved higher, nor did the median prison increase at the higher thresholds (Figure 3).

It is important to note that the trends revealed in the early data may not be attributable to changes in the felony larceny threshold alone. The COVID-19 pandemic and policies implemented specifically to reduce the spread of the virus also affected Virginia’s criminal justice system. It remains unclear as to when, and to what extent, court caseloads, court case processing, and jail and prison populations will return to pre-pandemic levels or trends.

Figure 3
Felony Sentencing Events with Primary (Most Serious) Offense
for Larceny or Other Offense Affected by the Felony Larceny Threshold
FY2016-FY2021

Excluding Events in Which the Defendant Was Convicted of Any Additional Felony

Cases were assigned to the applicable felony threshold based on the date of the offense. ➔		Felony Threshold \$200	Felony Threshold \$500	Felony Threshold \$1000
Felony Larceny (Not Petit Larceny 3 rd offense)	Number of Sentencing Events	14,475	3,019	186
	Probation/No Active Incarceration	38.1%	38.3%	38.2%
	Local-Responsible (Jail) Term	40.6%	42.1%	47.3%
	State-Responsible (Prison) Term	21.3%	19.6%	14.5%
	Total	100.0%	100.0%	100.0%
	Median Prison Sentence	1.5 yrs.	1.5 yrs.	1.5 yrs.

Source: Virginia Criminal Sentencing Commission’s Sentencing Guidelines Data System

Available data are insufficiently detailed to identify offenders convicted of petit larceny who stole a package delivered to a residence and, therefore, would be subject to the proposed 10-day mandatory minimum sentence.

Furthermore, data are insufficient to identify the number of larcenies in which a catalytic converter is stolen from a motor vehicle or the value associated with stolen converters. If the proposal were enacted, affected individuals may be sentenced similarly to those who are currently convicted of Class 6 felony larceny offenses under § 18.2-97, § 18.2-102, § 18.2-108.1, or § 18.2-109. According to Sentencing Guidelines data for FY2020 and FY2021, 15.6% of offenders convicted of Class 6 felony larcenies received a state-responsible (prison) term with a median sentence of 1.3 years. Another 48.8% received a local-responsible (jail) term for which the median sentence was 3.0 months. The remaining 35.6% did not receive an active term of incarceration to serve after sentencing.

According to General District Court Case Management System (CMS) for FY2020 and FY2021, 135 offenders were convicted of a Class 1 misdemeanor under § 18.2-146 for vandalizing a car, etc. In 45.9% of the cases, the offender received a jail term resulting in a median sentence of one month. The amount of damage caused in the cases is not known; therefore, it is not known how many of the offenders would be subject to proposed Class 6 felony for damage exceeding \$500. However, FY2020-FY2021 Sentencing Guidelines data indicate that offenders convicted of a Class 6 felony under § 18.2-137(B,ii) for vandalism of a property or monument most often received a jail term (44.7% of cases) with a median sentence of six months. Only 20.0% of offenders convicted of this felony vandalism charge received a prison term (median sentence of 1.3 years).

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation would reduce the felony threshold for grand larceny and many other property crimes. Some offenses currently punished as misdemeanors would once again 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 above what would otherwise be needed. The impact is estimated to be at least 105 beds by FY2028. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$3,829,684. The impact of other aspects of the proposal (petit larceny of delivered packages, theft of catalytic converters, and vandalism of vehicles, etc.) cannot be estimated due to insufficient data.

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

FY23	FY24	FY25	FY26	FY27	FY28
54	94	104	105	105	105

Local adult correctional facilities. Under the proposal, offenders convicted of certain offenses will be convicted of felonies rather than misdemeanors due to the reduction in the felony larceny threshold. As a result of this change, some offenders may receive longer jail sentences, while other offenders may be given a state-responsible (prison) term 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 56 beds by FY2028 (state costs: at least \$771,642; local costs: at least \$1,214,130). The impact of other aspects of the proposal (petit larceny of delivered packages, theft of catalytic converters, and vandalism of vehicles, etc.) cannot be estimated due to insufficient data.

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

FY23	FY24	FY25	FY26	FY27	FY28
50	56	56	56	56	56

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. However, the potential impact on community corrections resources cannot be quantified.

Virginia's Sentencing Guidelines. The Sentencing Guidelines cover the vast majority of larceny offenses affected by the proposal. As new felonies, convictions under the proposed § 18.2-97.2 and the amended § 18.2-146 would not be covered by the Guidelines when such an offense is the primary, or most serious, offense in a case. However, convictions under these provisions could augment the Guidelines recommendation if the most serious offense at sentencing is covered by the Guidelines. No immediate adjustment to the Guidelines would be necessary under the proposal. However, if the proposal is enacted, the Sentencing Commission in the future would conduct detailed analyses of sentencing patterns to determine if revisions to the Guidelines were necessary and to determine the feasibility of adding the new felonies to the Guidelines system.

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 \$3,829,684 for periods of imprisonment in state adult correctional facilities.

Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation 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 2021.
2. Because the Secretary of Public Safety's Committee on Inmate Forecasting did not adopt a state-responsible admissions forecast in 2021, admissions were assumed to remain flat during the forecast horizon.
3. Cost per prison bed was assumed to be \$36,305 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 FY2020 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$37.58 per day or \$13,726 per year. The local cost was calculated by using the daily expenditure cost of \$100.95 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 \$59.13 per day or \$21,597 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 reduction in the felony larceny threshold from \$1,000 to \$500, the Commission examined FY2019-FY2020 felony sentencing events in which larceny or another offense affected by the larceny threshold was the primary, or most serious, offense. This time period was selected because the felony larceny threshold was \$500 during that two-year period. Among these sentencing events, the Commission identified individuals who committed the larceny or other affected offense after the felony threshold of \$500 became effective (July 1, 2018). 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. Virginia's criminal justice data systems do not capture 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. Among cases involving \$500 or more (excluding the cases with unknown values), the Commission found that 30.8% of the sentencing events in the study involved a value between \$500 and \$999. To calculate the impact of the proposal, the Commission assumed that, of the offenders identified during the FY2019-FY2020 time period, 30.8% committed acts involving an amount between \$500 and \$999. Accordingly, a random sample of 30.8% of the identified offenders was selected to represent a cohort of offenders who may be affected by the proposal.
3. The impact of other aspects of the proposal (petit larceny of delivered packages, theft of catalytic converters, and vandalism of vehicles, etc.) cannot be estimated due to insufficient data.

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 proposal (convicted of misdemeanors under current law) were assumed to receive sentences similar to all offenders convicted of misdemeanor larceny during FY2019-FY2020. 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 FY2019-FY2020 for a felony larceny or other offense affected by the larceny threshold. During this period, the felony larceny threshold was \$500 (the same felony larceny threshold specified in the proposal).
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 December 31, 2020. For larceny offenses, this rate was 7.0%.

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