



VIRGINIA CRIMINAL SENTENCING COMMISSION



June 5, 2017

Larceny Threshold Request

- **During the 2016 General Assembly Session, the Commission prepared an analysis for Senate Bill 23 (Reeves), which sought to increase the felony larceny threshold from \$200 to \$500.**
 - **Using data from the Commission's 2015 Larceny/Fraud Study, staff estimated the impact of the proposal on offenders convicted of non-embezzlement larceny who were not convicted of other felonies and who would not be eligible for a petit larceny 3rd conviction.**
 - **A more thorough analysis was not possible given the short turnaround required for the analysis.**
- **The bill failed and will likely be introduced again during the 2018 Session.**





Virginia Criminal Sentencing Commission

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On the web at www.vcsc.virginia.gov

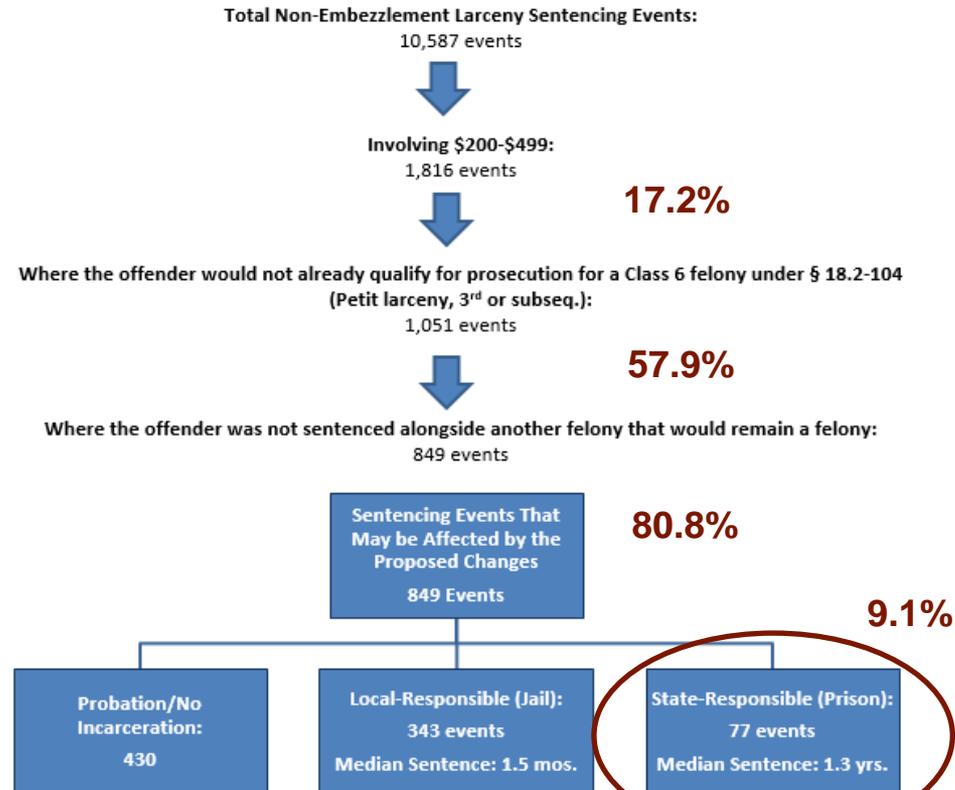
Analysis for SB 23 (2016)

Response to Information Request

Requester: Senator Bryce E. Reeves

Scenario: Reducing penalty for larceny offenses involving \$200 to \$499 to a misdemeanor.

Analysis: Using the database constructed for the 2015 Larceny/Fraud study, in which the sample was weighted to reflect the population of larceny and fraud sentencing events in FY2011-FY2013, identified cases that would most likely be affected by this change:



Analysis for SB 23 (2016) cont.

State adult correctional facilities.

By reducing the penalty for larceny offenses involving \$200 to \$499, the proposal is expected to reduce the future state-responsible (prison) bed space needs of the Commonwealth. The impact on state

at least -51 beds by FY2022, or at least -\$1,613,599.

serious, offense was larceny (excluding embezzlement). It was assumed that all affected offenders who received a prison sentence in the past would, under the current scenario, receive a sentence of 12 months in jail.

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

FY17	FY18	FY19	FY20	FY21	FY22
-16	-45	-50	-51	-51	-51

Local adult correctional facilities.

Since offenders who currently receive a prison term would most likely receive a jail term under the proposal, it is also expected to increase the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be 21 beds by FY2022 (state costs: at least \$231,095; local costs: at least \$339,646).

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

FY17	FY18	FY19	FY20	FY21	FY22
14	20	20	20	21	21

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 2015.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in 2015.
3. Cost per prison bed was assumed to be \$31,406 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 FY2014 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$30.57 per day or \$11,166 per year. The local cost was calculated by using the daily expenditure cost of \$78.53 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 \$44.93 per day or \$16,411 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. Eligible offenders were identified as those who received a state-responsible prison term.

Assumptions relating to sentencing and length-of-stay

1. The impact of the proposed legislation, which would be effective on July 1, 2016, is phased in to account for case processing time.
2. 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

Larceny Threshold Request

- **In April 2017, a legislator asked the Commission to:**
 - **Update this analysis using the most recent data available, and**
 - **Expand the scope to include additional scenarios, such as instances in which a larceny conviction is an additional offense to another felony or the larceny appears in the prior record.**
 - **The Commission conducted a similar analysis for a bill in 2009 that, among other changes, would reduce certain larceny offenses to “Aggravated Class 1 misdemeanors” (Senate Bill 1422).**



2009 Fiscal Impact Statement

Senate Bill 1422

- **Senate Bill 1422 – Felony larceny threshold and new class of misdemeanor**
 - **The proposal raised the threshold for felony larceny from \$200 to \$500.**
 - **The proposal created a new penalty class called an Aggravated Class 1 misdemeanor, punishable by up to 24 months in jail.**
 - **Eight crimes would be raised from Class 1 misdemeanors to the new Aggravated Class 1 misdemeanor.**
 - **Larceny offenses involving \$200 to \$499 would be punished as Aggravated Class 1 misdemeanors.**
 - **The list of gang predicate offenses would be expanded.**



2009 Fiscal Impact Statement

Senate Bill 1422

- **After running multiple simulation models, staff calculated the proposal would result in 192 fewer prison beds and 91 additional jail beds needed by the end of FY2015.**
- **The proposal failed to report from the Senate Courts of Justice Committee.**

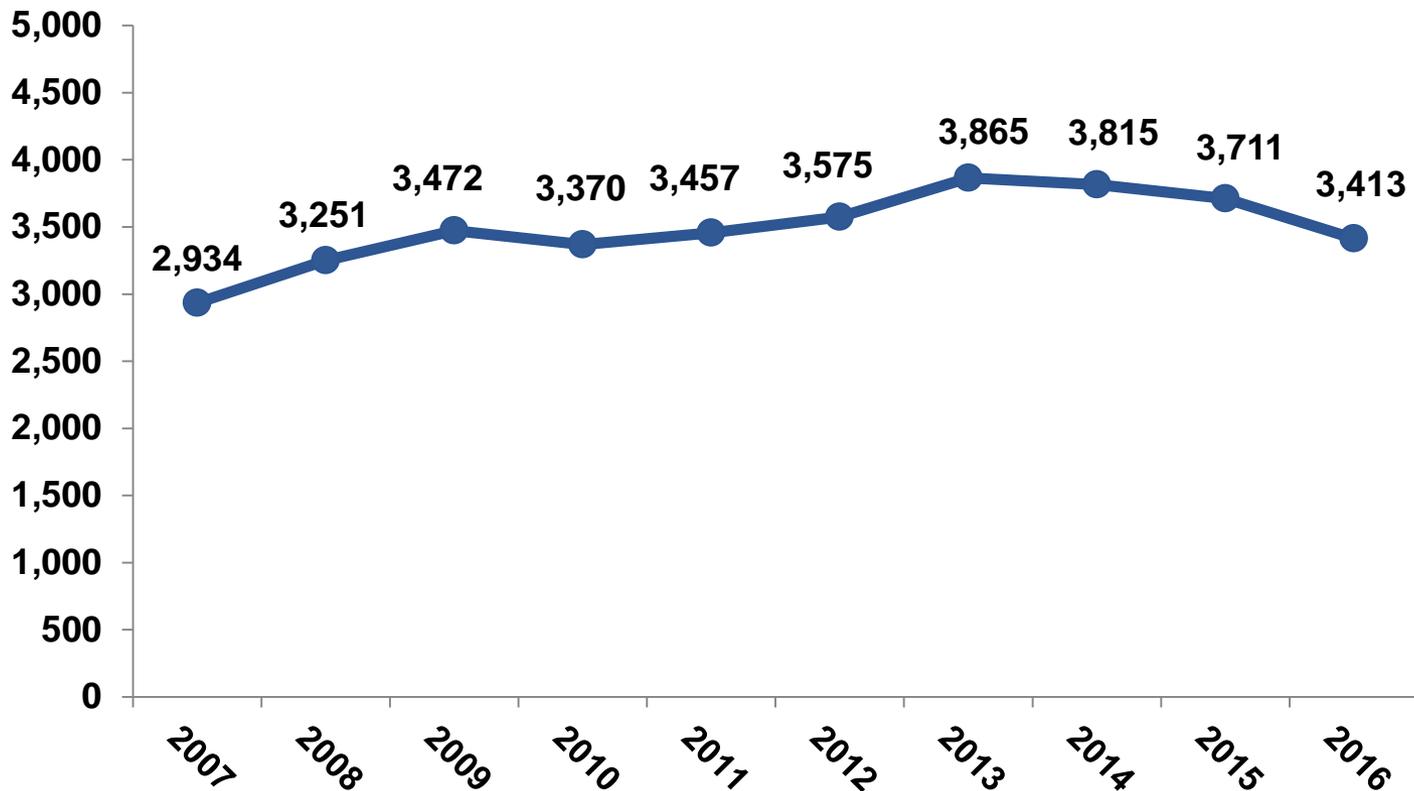


Current Larceny Threshold Analysis

- **Goal** – Estimate the minimum impact of changing the felony larceny threshold from \$200 to \$500 by using historical data to:
 1. Identify cases that might be affected by the proposal,
 2. Determine how the cases would be affected (larceny reduced to misdemeanor vs. reduced to petit larceny 3rd), and
 3. Model the potential differences in sentencing under current law versus under the proposal.



Non-Embezzlement Larceny Sentencing Events FY2007-FY2016



Source: Sentencing Guidelines Database, FY2007-FY2016



Current Larceny Threshold Analysis

Three Kinds of Sentencing Events

Current

1. **Non-embezzlement larceny is the only felony.**
2. **Non-embezzlement larceny accompanies at least one felony that would remain a felony.**
3. **Felony non-embezzlement larceny in prior record.**



Potential Impact

Event would consist of only misdemeanors (not eligible for prison) or petit larceny 3rd

Still eligible for prison, but sentence may change

Still eligible for prison, but sentence may change



Current Larceny Threshold Analysis

Two Types of Prior Records

Current

- A. **Less than two prior larceny convictions (not eligible for petit larceny 3rd).**
- B. **Two or more prior larceny convictions (eligible for petit larceny 3rd).**



Affected larceny offense in current event would be a misdemeanor



May still be convicted of a felony (eligible for prison), but sentence may change



Current Larceny Threshold Analysis

Identifying Affected Cases:

- Data from the 2015 Larceny/Fraud Study were used to create predictive models to identify which cases:
 - Involved a value ranging from \$200 to \$499 and
 - Qualified for petit larceny 3rd or subsequent.
- These models were then applied to FY2015 and FY2016 data to identify cases that would likely be affected by the proposed change.

Predicting Sentences Under Proposal:

- For each scenario in which a larceny in the current sentencing event would change, the sentences for cases identified as likely involving \$200 to \$499 were compared to cases that currently involve petit larceny or petit larceny 3rd or subsequent.



Estimated Fiscal Impact

Sentencing Event	Eligible for Petit Larceny 3 rd	State-Responsible (Prison)		Local-Responsible (Jail)	
		Beds	Costs/ Savings	Beds	Costs/ Savings
Non-Embezzlement Larceny is the Only Felony	Not Eligible	-36	-\$1,168,332	14	\$163,552
	Eligible	-11	-\$342,430	-5	-\$51,785
Non-Embezzlement Larceny with 1 or More Other Felony	Not Eligible	-30	-\$974,869	4	\$45,244
	Eligible	-19	-\$629,130	8	\$96,680
Felony Non-Emb. Larceny in Prior Record	Not Eligible	To Be Determined			
	Eligible				
Estimated Impact		At least -94*	-\$3,055,313	22	\$252,106

* Reflects the largest single-year decrease by FY2024.



Key Assumptions

- **The number of cases involving a non-embezzlement larceny offense that would be reduced to either petit larceny or petit larceny 3rd was estimated based on data from the 2015 Larceny/Fraud study.**
- **For cases in which the sentencing event would consist of only misdemeanors under the proposal, all offenders who received a prison sentence were assumed to receive 12 months in jail.**
- **It was assumed that all affected offenders eligible for a petit larceny 3rd conviction would be convicted of that felony.**
- **For cases that would remain as felony sentencing events, Sentencing Guidelines data was used to estimate the impact of the proposal on disposition type and sentence length.**



Next Steps

- Investigate calculating the third aspect of the impact:
 - Felony non-embezzlement larceny in prior record of a current felony sentencing event and
 - Prior larceny would be reduced to misdemeanor or
 - Prior larceny would be reduced to petit larceny 3rd
- Sentencing Guidelines data do not include sufficient detail to identify instances in which an individual had a prior larceny conviction that might be affected by the proposal.
- As a result, supplemental data sources would be required to estimate this aspect of the impact.

Since Pre-/Post-Sentence Investigation Reports are no longer completed in the majority of felony cases, this database is no longer a reliable option for this type of information. Staff is currently discussing other possible data sources, but the approach has not yet been finalized.



