## LEGISLATIVE CHANGE TO LARCENY THRESHOLD

### HISTORICAL RULE:

SCORE PRIOR RECORD BASED ON VIRGINIA'S CURRENT PENALTY STRUCTURE

## REQUEST TO **REVIEW RULES**

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#### Virginia Association of Commonwealth's Attorneys

August 29, 2018

Judge Edward L. Hogshire, Chairman Virginia Criminal Sentencing Commission 100 North Ninth Street, 5th Floor Richmond, Virginia 23219

#### Re: Felony Larceny Sentencing Calculations

#### Dear Judge Hogshire:

The Virginia Association of Commonwealth's Attorneys represents the 120 Commonwealth's Attorneys across Virginia. We are writing to you today with concerns about the prior felony larceny sentencing guideline calculations and ask that this issue be added to the Commission's September agenda for reconsideration.

As we are all aware, as of July 1, 2018, the monetary threshold for a larceny to be considered a felony raised from \$200 to \$500. This was the first change in the larceny threshold in Virginia in almost 40 years. Ouite expectedly, all thefts over \$200 but below \$500 committed before July 1. 2018 for which a felony conviction was handed down will remain felony convictions.

Unfortunately, the Commission has adopted policies for scoring felony larceny convictions prior to July 1, 2018 that will require the prosecutor to prove that the amount of the prior theft exceeded \$500. This raises serious questions about how this proof is going to take place; the standard of proof, the admissibility or inadmissibility of hearsay, or the ability of the defendant to confront that "evidence" that proves the item stolen was \$500 or more.

Most critically, there is the problem of the availability of any evidence at all on a thirty plus year old conviction. Assuming this evidence exists in

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General Correspondence: P.O. Box 3549 Williamsburg, Virginia, 23187-3549

## PRIOR QUESTIONS ANSWERED BY EMAIL

HISTORICAL POLICY

From: Meredith Farrar-Owens
Sent: Friday, June 29, 2018 12:32 PM

To: Plowman, Jim

Cc: Shannon Taylor; Jim Fisher (james.fisher@fauquiercounty.gov); pwatson.ca@greensvillecountyva.gov;

Mike Doucette (mrdoucette539@gmail.com); Edward Hogshire; Jody Fridley

Subject: RE: Larceny Threshold Issue

#### Mr. Plowman,

Thank you for sharing your concerns and those of your colleagues regarding the larceny issue. The Commission's staff wants to hear the concerns of guidelines users so that we may be as responsive as we possibly can.

At the April meeting, Commission members were presented with two options for updating the VCCs to reflect the change in the felony larceny threshold adopted by the General Assembly during the 2018 Session. The decision was simply for the administration of the VCCs. The Commission opted to keep the existing VCCs but modify the descriptions for each. Had the Commission elected to go the other route (retire all the affected larceny VCCs and create new ones), it would not have changed the current discussion. Changes in guidelines scoring reflective of the legislative change would still be the heart of the matter.

I have attempted to respond to each discussion point below. However, I think it is important to remember that there have been many changes in Virginia's statutory penalties over the years. Where changes in penalty have occurred, guidelines users are instructed to score prior offenses based on the current penalty structure. Nearly all of these statutory changes have been to increase penalties. Elements of the offense are often critical for determining the current penalty structure because they are specified in the statutory language (e.g., age of victim, use of a weapon, degree of injury, location of the offense, quantity of drugs, value of a theft, etc.) and, where documentation of such element exists, the penalty structure is assigned based on those elements. In this way, all offenders who committed that specific act are scored in the same manner (i.e., the prior offense is given the same weight on the guidelines). By statute, the value of a larceny determines the penalty range. With the legislation adopted by the 2018 General Assembly, the penalty structure for larceny involving \$200 to \$499 dollars will change to a Class 1 misdemeanor.

Please find below (in red) more detailed responses that I hope will be useful in the discussion of this issue. Of course, please contact me should you have any questions regarding the information provided here.

Judge Hogshire has indicated that, if you would like, this issue can be added to the September agenda.

With kind regards, Meredith

Meredith Farrar-Owens

Director

Virginia Criminal Sentencing Commission

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## RULE IN PLACE SINCE 1988

HISTORICAL POLICY

#### APPENDIX C: CALCULATING PRIOR RECORD

The scoring of prior offenses at conviction is based on the seriousness of those offenses as measured by the maximum penalties specified in the Code of Virginia. The guidelines user should try to obtain as many details as possible concerning the prior offenses at conviction. These details are particularly important for those offenses which have several degrees of seriousness. The seriousness of a burglary, for instance, is determined by whether or not the building was occupied, whether or not the building was a dwelling, whether or not the offender used a deadly weapon, and what the offender's intent was. The identification of such offense elements therefore facilitates the reliable scoring of the offender's prior record. For a few crimes (e.g., rape, robbery), identification of offense elements is not as important as in other crimes because the legal variations of these offenses all carry the same maximum

In the event of an out-of-state conviction, the guidelines user first identifies the offense elements and then tries to find an analogous offense in the Code of Virginia. If the user cannot find an analogous offense, either because of the vagueness of the conviction information or because of the rarity of the crime, he scores the offense at the lowest possible seriousness level.

As a general rule, if an ambiguous entry cannot be reliably resolved, the guidelines user treats the information in a way that will not adversely affect the offender.

Accordingly, if disposition information is unclear or missing, the guidelines user assumes that no conviction occurred. Likewise, if the existing information is unclear as to whether an offense at conviction was a felony or a misdemeanor, the guidelines user assumes that the offense was a misdemeanor.

A prior conviction is any offense for which the offender has been convicted before the sentencing for the instant offense. Therefore, offenses at conviction which are pending sentencing in another court at the time of sentencing for the instant offense are to be considered part of the offender's prior record and scored accordingly.

#### APPENDIX C: CALCULATING PRIOR RECORD

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## PILOT JURISDICTIONS 1991

HISTORICAL POLICY

Date/Place	Offense	Disposition

Example # 8:

8/7/83 Burglary, Fifteen Mayberry, NC three counts years

Since the charge and disposition information does not specify the exact nature of the burglaries, the guidelines user scores the offense as analogous to the least serious burglary in the Virginia Code, a Class 6 felony (maximum penalty five years). Since there is no evidence of more than one sentencing event, the user scores only one count.

#### Example #9:

1/29/87 Narcotics Thirty days, Pixlie, IL possession twenty suspended

In this example, the charge and disposition information does not indicate what type of drug was involved nor does it indicate if the offense was a felony or a misdemeanor. If there is no evidence to verify that this crime was a felony, the guideline user treats it as a misdemeanor. Also, since there is not enough information to equate this crime to a Virginia Class 1 misdemeanor for scoring purposes, the user assumes that the crime is less serious and does not score it.

#### Example # 10:

7/7/86 Assault and Twelve months,
Dinwiddie, VA battery five suspended

As above, it is not clear whether this assault was a felony or a Class 1 misdemeanor. Giving the offender the benefit of the doubt, the guidelines user scores this conviction as a Class 1 misdemeanor (maximum penalty one year).

#### Example # 11:

12/5/82 Worthless checks, \$50 costs Roanoke, VA two counts

Because the disposition information does not include the amount of the checks (whether more or less than \$200), the guidelines user scores this offense as a Class 1 misdemeanor (maximum penalty one year; FRD-2625-M1). If no evidence exists to prove that both counts were disposed of in the same sentencing event, the user scores only one count.

#### Example # 12:

6/2/75 Receiving stolen Two years Albuquerque, NM property probation

3/4/76 Bank robbery, Albuquerque, NM two counts

#### 

San Francisco, CA dwelli

dwelling three
2. Possession of suspe

Possession of suspended stolen credit cards

Resisting arrest

In this example, the guidelines user scores receiving stolen goods as a Class 1 misdemeanor since the dollar amount is not known. The user considers the bank robbery analogous to the offense described in Virginia Code section 18.2-60 (maximum penalty life). The 1982 entry from California indicates a felony-level disposition of five years in prison (three suspended) but does not specify for which crime(s) the penalty was imposed. For purposes of scoring, the guidelines user assumes that a felony at conviction did occur, but since he does not know its seriousness, he scores only a Class 6 felony (maximum penalty five years).

#### Example # 13:

3/30/80 Felony bad check Two years, Mahanoy City, PA suspended;

Sentencing information here is precise enough for the guidelines user to score the offense as analogous to that described by Virginia Code section 18.2-181 (FRD-2624-F6). The user therefore scores one Class 6 felony (maximum penalty (five years).

#### Example # 14:

5/5/85 Grand larceny, Two years, Butte, MT attempted one suspended

This offense is analogous to that described by Virginia Code section 18.2-95(2)(LAR-2359-A9). The guidelines user treats this attempt as discussed in "Special Circumstances" in the beginning of this manual. Since grand larceny carries a statutory penalty of twenty years, the guidelines user scores this attempt as a felony with a statutory maximum of ten years.

#### Example # 15:

5/25/63 Embezzlement, Conviction Washington, D.C. amount unknown

Evidently a conviction did occur, but because of the lack of disposition information, the guidelines user considers the offense analogous to a Class 1 misdemeanor (maximum penalty one year; LAR-2708-M1).

APP-8

Forty years,

twenty suspended

rev. 1-1-91

Date/Place Offense Disposition

Example # 8

8/7/83 Burglary, Fiftee Mayberry, NC three counts years 
 Date/Place
 Offense
 Disposition

 4/17/82
 1. Burglary of San Francisco, CA dwelling
 Five years, three

Possession of suspended stolen credit

Example # 15:

5/25/63 Embezzlement, Conviction Washington, D.C. amount unknown

Evidently a conviction did occur, but because of the lack of disposition information, the guidelines user considers the offense analogous to a Class 1 misdemeanor (maximum penalty one year; LAR-2708-M1).

## STATEWIDE 1995

HISTORICAL POLICY

## Out of State or Federal

Convictions: If the offender has an out-of-state or federal conviction, the guidelines user first identifies the offense elements and then tries to find an analogous offense listed in the VCC codes. The out-of-state or federal conviction would then be scored according to its current statutory maximum penalty under Virginia law.

offense, either because of the vagueness of the conviction information or because of the rarity of the crime, the offense is scored at the lowest possible seriousness level under Virginia law. When scoring out-of-state, federal, or military convictions, the guidelines user should avoid assigning a seriousness level based on felony/misdemeanor

## STATEWIDE – FIRST REVISION 1997

HISTORICAL POLICY
PUT IN WRITING

#### Completing the Offense Work Sheets

16. Change in Virginia Penalty Structure: All prior convictions are to be scored based on Virginia's current penalty structure.

EXAMPLE: In 1993 the maximum penalty for second degree murder was changed from 20 years to 40 years. All prior convictions for second degree murder will be scored at the current penalty level — 40 years when scoring prior convictions.

- 17. Imposition of Sentence Suspended or Execution of Sentence Suspended: if there is a finding of guilt or the acceptance of a plea agreement, the offense will be scored as a conviction. Imposition of sentence suspended and execution of sentence suspended cases will be scored as convictions until the charges are dismissed by the court.
- 18. First Offender §18.2-251: In these cases the court does not enter a finding of guilt. As a result, offenses sentenced under §18.2-251 cannot be scored as prior convictions. However, if the offender violates the conditions of the first offender statute and is found guilty of the original charge, the offense can be used as part of the prior record.

#### ▼ Other Prior Record Factors

Many of the work sheets contain factors that measure an offender's prior record for certain types of offenses or the volume of prior convictions. Most of the instructions governing the scoring of "prior convictions/adjudications" are also applicable to these types of prior record factors. Convictions scored under these factors may be the same as those scored in the factor "prior convictions/adjudications." However, unlike the scoring of "prior convictions/adjudications."

- Is not restricted to the five most recent and serious prior conviction/ sentencing events.
- 1s not restricted to a single offense or count from a prior conviction/ sentencing event.

The following other prior record factors vary by offense group; instructions also appear in the chapters of the manual that address each set of work sheets.

A. Prior Adult Felony Property

Convictions: This is the only prior record factor that excludes juvenile delinquency adjudications. For this factor score the number of convictions (including counts) for felony adult property convictions. Applicable offenses include most burglary, larceny, fraud, arson, trespass and vandalism convictions. However, grand larceny from a person, burglary with the intent to assault, murder, rape or rob, and arson of an

occupied building are considered

crimes against a person and not

property crimes.

- B. Prior Felony Property Convictions/Adjudications: When scoring this factor assign points based on the number of prior convictions and juvenile delinquency adjudications (including counts) for felony property offenses. Applicable offenses include most burglary, larceny, fraud, arson, trespass and vandalism convictions. However, grand larceny from a person, burglary with the intent to assault, murder rape or rob, and arson of an occupied building are considered orimes against a person and not property crimes.
- C. Prior Felony Burglary Convictions/Adjudications: For this factor, assign points based on the number of prior convictions and juvenile, delinquency adjudications (including counts) for all felony burglary offenses. Any prior conviction or delinquency adjudication must have a Virginia Crime Code (VCC) prefix of "BUP" to be scored for this factor.
- D. Prior Felony Fraud Convictions/ Adjudications: When scoring this factor, assign points based on the number of prior convictions and juvenile delinquency adjudications (including counts) for felony fraud offenses. Any prior conviction or delinquency adjudication must have a Virginia Crime Code (VCC) prefix of "FRD" to be scored for this factor.
- E. Prior Felony Drug Convictions/ Adjudications: When scoring this factor, assign points based on the number of prior convictions and juvenile delinquency adjudications (including counts) for all felony drug or narcotic offenses. Any prior conviction or delinquency adjudication must have a Virginia Crime Code (VCC) prefix of "NAR" to be scored for this factor.

16. Change in Virginia Penalty
Structure: All prior convictions are to be scored based on Virginia's current penalty structure.

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# CHANGES IN THE CODE OF VIRGINIA'S PENALTY STRUCTURE

STRUCTURE AND ELEMENTS

# CHANGES IN THE CODE OF VIRGINIA'S PENALTY STRUCTURE

- SECOND DEGREE MURDER: 20 YEARS TO 40 YEARS
- FELONY MURDER: 20 YEARS TO 40 YEARS
- CHILD PORNOGRAPHY: FINE TO 40 YEARS
- CHILD ENDANGERMENT: 12 MONTHS TO 5 YEARS
- Habitual Offender:
  - NO ENDANGERMENT OR 1ST OFFENSE: 5 YEARS TO 12 MONTHS
- SIMPLE ASSAULT AGAINST LAW ENFORCEMENT:
  - 12 Months to 5 Years
  - Definition of Law Enforcement Officer

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Title 18.2 Crimes and Offenses Generally
Chap. 4 Crimes Against the Person, §§ 18.2-30 - 18.2-76.2
Art. 4 Assaults and Bodily Woundings, §§ 18.2-51 - 18.2-57.4
  § 18.2-57. Assault and battery; penalty. —
  [Current] Text in effect from and after January 15, 2018.
  Amendments by Acts 2015, cc. 38, 730, as amended by Acts 2017, cc. 698, 707, effective January 15, 2018.
  Text in effect from July 1, 2017, until January 15, 2018.
  Amendments by Acts 2017, cc. 29, 56, effective July 1, 2017.
  Text in effect from July 1, 2016, until July 1, 2017.
  Amendments by Acts 2016, c. 420, effective July 1, 2016.
  Text in effect from July 1, 2015, until July 1, 2016.
  Amendments by Acts 2015, c. 196, effective July 1, 2015.
  Text in effect from July 1, 2014, until July 1, 2015.
  Amendments by Acts 2014, cc. 663, 714, effective July 1, 2014.
  Text in effect from July 1, 2013, until July 1, 2014.
  Amendments by Acts 2013, cc. 698, 707, 711, 748, 782, effective July 1, 2013.
  Text in effect from July 1, 2011, until July 1, 2013.
  Amendments by Acts 2011, cc. 230, 233, 374, effective July 1, 2011.
  Text in effect from July 1, 2009, until July 1, 2011.
  Amendments by Acts 2009, c. 257, effective July 1, 2009.
  Text in effect from July 1, 2008, until July 1, 2009.
  Amendments by Acts 2008, c. 460, effective July 1, 2008.
  Text in effect from July 1, 2006, until July 1, 2008.
  Amendments by Acts 2006, cc. 270, 709, 829, effective July 1, 2006.
  Text in effect from July 1, 2004, until July 1, 2006.
  Amendments by Acts 2004, cc. 420, 461, effective July 1, 2004.
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Text in effect from July 1, 2002, until July 1, 2004.

18.2-186(A)		7/1/2007	False statement to obtain property/credit- Make or cause	FRD-2818-M2	0-6M
18.2-186.3(D)	7/1/2013		Identity Fraud - Results in the detention of victim	FRD-2508-F5	1Y-10Y
18.2-186.3(D)	7/1/2000	7/1/2013	Identity Fraud - Results in the detention of victim	FRD-2508-F6	1Y-5Y
18.2-186.3(D)	7/1/2013		Obtain identifying info. of 50 or more people	FRD-2502-F4	2Y-10Y
18.2-186.3(D)	7/1/2006	7/1/2013	Obtain identifying info. of 50 or more people	FRD-2502-F5	1Y-10Y
18.2-186.3(D)	7/1/2013		Obtain identifying info. of 5 or more people	FRD-2501-F5	1Y-10Y
18.2-186.3(D)	7/1/2006	7/1/2013	Obtain identifying info. of 5 or more people	FRD-2501-F6	1Y-5Y
18.2-194	7/1/2005		Possession of 2 or more signed credit cards or numbers	FRD-2511-F9	1Y-20Y
18.2-194	11/2/1998	7/1/2005	Possession of 2 or more signed credit cards or numbers	FRD-2511-F5	1Y-10Y
18.2-195.2(A)	7/1/2007		Credit Card - False statements to obtain credit card	FRD-2528-M1	0-12M
18.2-195.2(A)	7/1/1996	7/1/2007	Credit Card - False statements to obtain credit card	FRD-2528-M2	0-6M
18.2-216.1	7/1/2002		Unauthorized use of name or picture in advertising	FRD-2619-M9	Fine
18.2-216.1		7/1/2002	Unauthorized use of name or picture in advertising	FRD-2619-M1	0-12M
18.2-266.1	7/1/2011		Driving while intoxicated - Under 21 Years of Age	DWI-5416-M1	0-12M
18.2-266.1	8/9/2010	7/1/2011	Driving while intoxicated - Under 21 Years of Age (Consume)	DWI-5416-M9	Fine
18.2-266.1	7/1/2008	7/1/2010	Driving while intoxicated - Under 21 Years of Age	DWI-5416-M1	0-12M
18.2-266.1	4/28/1994	7/1/2008	Driving while intoxicated - Under 21 Years of Age	DWI-5416-S9	Fine
18.2-268.3	3/15/2017		Refuse of breath test - 2nd DWI/refusal within 10 years	DWI-5441-M1	0-12M
18.2-268.3	7/1/2004	3/15/2017	Refuse blood/breath test - 2nd DWI/refusal within 10 years	DWI-5441-M2	0-6M
18.2-285	7/1/2005		Intoxicated person uses firearm etc. while hunting	WPN-5224-M1	0-12M
18.2-285	7/1/1999	7/1/2005	Intoxicated person uses firearm while hunting	WPN-5224-M2	0-6M
18.2-285		7/1/1999	Hunt, use firearms while intoxicated	WPN-5224-M3	Fine
18.2-308.2:1	7/1/2013		Sell, give firearm to designated felon, etc.	WPN-5218-F4	1Y-10Y (II)
18.2-308.2:1		7/1/2013	Sell, give firearm to designated felon	WPN-5218-F6	1Y-5Y (II)
18.2-328	7/1/1997		Operator of continuous illegal gambling operation	GAM-3927-F9	1Y-10Y
18.2-328		7/1/1997	Operator of continuous illegal gambling operation	GAM-3927-F6	1Y-5Y
18.2-369(A)	4/28/1994	7/1/2001	Incapacitated adult, abuse or neglect-serious injury/disease	FAM-3802-F6	1Y-5Y (II)
18.2-369(B)	7/1/2004		Incapacitated adult, abuse or neglect-serious injury/disease	FAM-3802-F4	2Y-10Y (II)
18.2-369(B)	7/1/2001	7/1/2004	Incapacitated adult, abuse or neglect-serious injury/disease	FAM-3802-F6	1Y-5Y (II)
18.2-370	7/1/2000	7/1/2001	Take indecent liberties with child (2nd or subsequent)	SEX-3666-F5	1Y-10Y (II)
18.2-370		7/1/2001	Take indecent liberties with child	SEX-3634-F6	1Y-5Y (II)
18.2-370(A)	7/1/2001	7/1/2005	Take indecent liberties with child w/ child under age 14	SEX-3634-F5	1Y-10Y (II)
18.2-370(C)	7/1/2001		Take indecent liberties with child (2nd or subsequent)	SEX-3666-F4	2Y-10Y (II)
18.2-370.1(A)	7/1/2001	7/1/2001	Take indecent liberties with child-custodian	SEX-3635-F5	1Y-10Y (II)

Does not include offenses that changed elements and did not require changes to the description. Does not include offenses that resulted in new VCCs because of changes to penalties and/or elements.

# WILL THERE BE CHANGES TO THE GUIDELINES RECOMMENDATIONS?

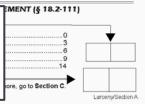
The legislative change may have an impact on the guidelines and result in increases in the number of departures (21% in FY 2017 recommended for probation no incarceration)

LARCENY FY2017			
Section A Score	Total Cases	Felony Larceny Scored*	Percentage of Cases
16.00	327	232	4%
17.00	324	248	5%
18.00	339	287	5%
19.00	316	287	5%
20.00	254	231	4%
21.00	194	179	3%
N=5415	1754	1464	27%
Under current rules	there is the potentia	al that for four prior larcey con	victions, points for Orior

Under current rules there is the potential that for four prior larcey convictions, points for Orior Convictions could decrease by 3, no point would be assigned for Prior Felony Larcenies, and one point would be added for Prior Misdemeanors (A maximum reduction of 6 points)

	_	⇒ Section	Offender N	lame:	
◆ P	Primary Offe	nse	(SCO)	res for attempted/conspired offenses are in pare	entheses)
A.	. Attempted or o	conspired larceny (1 count)		(1)	
В.	<ul> <li>Statutory max</li> </ul>	imum penalty equals 5 years			
		2 counts		4	
		3 counts		6	
C.			(1 count)	3	
D.	<ul> <li>Grand larceny</li> </ul>				
E.	. Grand larceny			10	
-	. Orang landerly			4	
F.	Grand larceny	of a firearm (1 count)		1	
G.		ee to return animal, aircraft, v	hicle or boat (1 count)	4	Sco
H.	. Larceny of bar	nk notes, checks or any book	of accounts; Any other larceny offense with maxim	um penalty of 20 years	•
		2 - 3 counts		4	
		4 counts		6	
A n	-i		4		
₩ PI			nts Total the maximum penalties for counts of		
	Years:	5 - 11	1 34 - 44	4	
		12 - 22	2 45 or more	5	0
		23 - 33	3		0
A A	dditional Of	fences Total the	m penalties for additional offenses, including co	ounte	
▼ A					_
	Years:			3	
		1 - 11		4	0
		12 - 22	2 45 or more	5	0
	Years:	Less than 2		3	0
4	Years:	2 - 11			_ <b>T</b>
<b>♦</b> P	Years:	Less than 22 - 11		3	_ <b>T</b>
<b>♦</b> P	Years:	Less than 2		3	- T
<b>♦</b> P	Years: Prior Felony	Less than 2		3	- T
<b>♦</b> P	Years: Prior Felony Number	Less than 2		3 4	- T
	Years: Prior Felony Number of Counts:	Less than 2		3 4	- T
	Years: Prior Felony Number of Counts: Other Prior F	Less than 2	s/Adjudications  victions/Adjudications		- T
	Prior Felony Number of Counts:  Other Prior F Number	Less than 2	s/Adjudications  victions/Adjudications	3234	- T
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<ul><li>◆ C</li><li>◆ P</li><li>◆ Pi</li></ul>	Years:  Prior Felony Number of Counts:  Other Prior F Number of Counts:  Prior Felony Number of Counts:  Prior Misdem Number of Counts:	Less than 2	s/Adjudications  victions/Adjudications  cations Against Person  Adjudications (Excludes Traffic)	3 3 4 2 2 3 3 4 2 2 5 5 6 6 6 6 6 6 6 6 6 6 6 6 6 6 6 6	0 0
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<ul> <li>◆ C</li> <li>◆ P</li> <li>◆ Pi</li> <li>◆ Pi</li> <li>◆ Pi</li> </ul>	Prior Felony Number of Counts:  Other Prior F Number of Counts:  Prior Felony Number of Counts:  Prior Misdem Number of Counts:  Prior Incarcel Prior Juvenil	Less than 2 2-11 12-20  Larceny Conviction 1 2-3 4 or more  Felony Property Con 1-4 5 or more  Convictions/Adjud 1 2 or more  Leanor Convictions/ 1-4 5 -8 9 or more  rations/Commitmer  le Record rained at Time of Or  None Other than parole/post-rele	s/Adjudications  cations Against Person  Adjudications (Excludes Traffic)		0 0

2018 General Assembly (HB 484 and SB 994) § 19.2-305.1. Restitution for property damage or loss; community service. — Modifications to the code may result in more offenders scored as legally restrained until restitution is paid



There may be occasions when the legislative change results in a higher recommendation

Primary Offense  A. Any attempted or conspired larceny (1 count)	_	* ⇒ Section		
B.   Maximum penalty equals 5 or 10 years   1 count   2 counts   4 do   7 do	Primary Offe	ense	(scores for attempted/conspired offenses are in parentheses)—	
B.   Maximum penalty equals 5 or 10 years   1 count   2 counts   4 do   7 do	A. Any attempte	ed or conspired larceny (	1 count)(1)	
Counts				
2 counts	and the second			
C. Grand larency suto  1 count.		2 counts	4	
C. Grand larcery sulp    1 count				
1 counts	C. Grand larcen			
2 counts				
D. Grand larceny for person (1 count)				
E. Grand larceny of a frearm (1 count)				
E. Grand larceny of a frearm (1 count)	D. Grand larcen	y from person (1 count)	6	
G. Larceny of bank notes, checks, etc. or any book of accounts  1 count 2 counts 3 counts 1 count 1 count 2 counts 3 counts 1 count 1 count 2 counts 3 counts 4 counts 2 counts 4 counts 5 counts 5 counts 5 counts 5 counts 5 counts 6 counts 7 c				
1 count	F. Failure of ba	ilee to return animal, airc	craft, vehicle or boat (1 count)	
2 counts. 4 Any other grand larceny offense with a maximum penalty of 20 years 1 count. 4 2 counts. 3 3 counts. 4 7 Primary Offense Remaining Counts Iolal the maximum penalties for counts of the primary not scored above Years: Less than 22 0 32 42 2 2 31 1 3 or more 3 Additional Offenses Iolal the maximum penalties for additional offenses, including counts Years: Less than 1 0 0 1 1 1 - 2 0 2 2 2 - 31 3 2 - 42 4 4 4 3 or more 1 11 - 2 1 2 2 2 2 - 31 3 3 2 - 42 4 4 4 3 or more 1 11 - 2 1 2 2 2 2 - 31 3 3 2 - 42 4 4 4 3 or more 1 2 2 3 3 or more 1 2 0 0 2 2 - 19 1 2 0 - 38 2 3 or more 1 2 0 0 2 2 - 19 1 2 0 - 38 2 3 or more 1 2 0 0 2 2 - 19 1 2 0 - 38 2 3 or more 1 2 0 0 2 2 - 19 1 2 0 - 38 2 3 or more 1 2 0 0 2 2 - 19 1 2 0 - 38 2 3 or more 1 2 0 0 2 2 - 19 1 2 0 - 38 2 3 or more 1 2 0 0 0 2 2 - 19 1 2 0 - 38 2 3 or more 1 2 0 0 0 2 2 - 19 1 2 0 - 38 2 5 0 0 0 0 2 2 - 19 1 2 0 - 38 2 5 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	G. Larceny of ba	ank notes, checks, etc. o	or any book of accounts	
H. Any other grand larceny offense with a maximum penalty of 20 years    counts   2 counts   3   4   7		1 count	3	
H. Any other grand larceny offense with a maximum penalty of 20 years    counts				
H. Any other grand larceny offense with a maximum penalty of 20 years  1 count 2 counts. 4 0 3 counts. 5 counts. 6 counts. 7  Primary Offense Remaining Counts   Total the maximum penalties for counts of the primary not scored above Years:   Less than 22				Score
2 counts	H. Any other gra			_
Primary Offense Remaining Counts Total the maximum penalties for counts of the primary not scored above Years: Less than 22 22-31 143 or more 3 0 0 32-42 22-31 143 or more 3 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0				
Primary Offense Remaining Counts Iotal the maximum penalties for counts of the primary not scored above Years: Less than 22				0
Years:   Less than 22		3 counts	7	
Years:   Less than 22	D			
Additional Offenses   Sotal the maximum penalties for additional offenses, including counts   Years:   Less than 1	Primary Offer			
Additional Offenses Total the maximum penalties for additional offenses, including counts  Years: Less than 1	Years:			_
Years: Less than 1		22 - 31		0
Years: Less than 1	A -1-11411 O			
1 - 10.	Additional O	Trenses Total the m	aximum penalties for additional offenses, including counts ————————————————————————————————————	
11 - 21	Years:	Less than 1	0	
22 - 31		1 - 10		
32 - 42 43 or more		11 - 21	2	$\perp$
32 - 42 43 or more		22 - 31	3	•
Prior Convictions/Adjudications Total the maximum penalties for the 5 most recent and serious prior record events  Years: Less than 2				0
Prior Convictions/Adjudications Total the maximum penalties for the 5 most recent and serious prior record events  Years: Less than 2.				0
Years:   Less than 2		45 01 111010	······································	
Years:   Less than 2	Prior Convic	tions/Adjudication	INS. Total the maximum penalties for the 5 most recent and serious prior record eve	ents
2-19				
Prior Misdemeanor Convictions/Adjudications (Excludes Traffic)  Number 1-2. 2 0 0 4 or more 4 0 0  Prior Incarcerations/Commitments If YES, add 7 → 0  Legally Restrained at Time of Offense None. 0 0 Cither than parole/post-release, supervised probation or CCCA 4 0 Parole/post-release, supervised probation or CCCA 5  SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS H: EMBEZZLEMENT (§ 18.2-111)  Amount of Embezzlement Amount: Less than \$15,000 0 0 \$15,000 or more 3 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	Years:			_
Prior Misdemeanor Convictions/Adjudications (Excludes Traffic)  Number 1 - 2				<b>T</b>
Prior Misdemeanor Convictions/Adjudications (Excludes Traffic)  Number 1 - 2				0 0
Number of Counts: 3		39 or more		
of Counts:  3	Prior Misdem	eanor Conviction	ns/Adjudications (Excludes Traffic)	
of Counts:  3	Niconsham	4.2		•
A or more				
Prior Incarcerations/Commitments  Legally Restrained at Time of Offense  None	or Counts:		-	U
Legally Restrained at Time of Offense  None		4 or more	4	
Legally Restrained at Time of Offense  None			and the second s	0
None	Prior Incarce	rations/Commitm	ients — If YES, add 7 —	0
None			•	
None	Legally Rest	rained at Time of	Offense	
Cther than parole/post-release, supervised probation or CCCA	Loguity Mest			<b>—</b>
SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS H: EMBEZZLEMENT (§ 18.2-111)  Amount of Embezzlement  Amount:  Less than \$15,000				_
SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS H: EMBEZZLEMENT (§ 18.2-111)  Amount of Embezzlement  Amount: Less than \$15,000		Other than parole/pos	st-release, supervised probation or CCCA4	0
Amount of Embezzlement  Amount: Less than \$15,000		Parole/post-release, s	supervised probation or CCCA5	
Amount of Embezzlement  Amount: Less than \$15,000				
Amount: Less than \$15,000	SCOI	RE THE FOLLOWING	FACTOR ONLY IF PRIMARY OFFENSE IS H: EMBEZZLEMENT (§ 18.2-111)	1
Amount: Less than \$15,000				
Total Score  See Larceny Section B Recommendation Table to convert score to guidelines sentence.	Amount of Er	mbezzlement ——		_
\$15,000 or more	Amount:	Less than \$15,000	0	0
Total Score  See Larceny Section B Recommendation Table to convert score to guidelines sentence.				9
See Larceny Section B Recommendation Table to convert score to guidelines sentence.				
See Larceny Section B Recommendation Table to convert score to guidelines sentence.				
See Larceny Section B Recommendation Table to convert score to guidelines sentence.		Total Score		
		. Julia Jeore		
inen, go to Section D Nonviolent Risk Assessment and follow the instructions.				
				Larceny/Sect

The legislative change may lower the midpoint recommendation on Section C by a maximum of 9 months

Example:

OLD

Midpoint: 1Y 4M

Range: 0Y 9M - 2Y 0M

NEW

Midpoint: 7M

Range: 0Y 7M - 1Y 0M

	_	<b>*</b> =				Onen	der Name					
	Primary Of	fense						or Record Classifi Category II		Other		
	illiary Oil	CIISC						ed/conspired offense			es)	
A	Attempted o	r conspired	arceny (1 coun	nt)								
В.	. Statutory ma	aximum pena	alty equals 5 or	10 years								
C.	. Grand larce	ny auto										
		1 count										
		2 - 3 cou	Ints				72	28		.14		
D.	. Grand larce	ny from pers	on									
		1 count								10		
E.	. Grand larce	ny of a firear	m (1 count)				68	34		.17		
F.	. Failure of ba	ailee to return	n animal, aircra checks, etc. or a	off, vehicle or b	boat (1 count)		28			7		
G.	. Larcerly or t	1 - 2 cou	unts				32	16		8		Score
		3 counts	3				96	48		.24		▼
H.	I. Any other lare	teny offense	with a maximu	im penalty of 2	20 years		28	14		7	0	
		2 counts					44	22		11	0	
		3 counts	·				56	28		.14		
P	Primary Off	ense Re	maining C	ounts As	ssign points to each	count of the prin	mary not s	cored above an	d total ti	he point	ts	_
	laximum Penalty:		_									_
	(years)											
A	dditional	Offenses	Assign points	to each additi	tional offense (inclu	iding counts) and	d total the	ooints				
	faximum Penalty				acriai Oilerise (iricio	-				0		
IVI	years)	5, 10								1		*
		20								2		
										3		
_												
					points to the 5 mos					the poin	ts	
M	Maximum Penalty	: Less tha	n 10							0		•
	(years)	10, 20 .								1	0	
		40 or m									0	
										3		
	Prior Felon	v I arcer	v Convict	ione/Adiu	idications					3		
P					udications _					3		$\Box$
P	Number	1								1		•
P		1 2 3								1	0	0
P	Number	1 2 3								1	0	0
	Number of Counts:	1 2 3 4 or mor	е							1	0	0
	Number of Counts:	1 2 3 4 or mor	e Property C	onviction	ns/Adjudicati	ons				1	0	0
	Number of Counts:  Other Prior  Number	1 2 3 4 or mor	e Property C	onviction	ns/Adjudicati	ons				1234		0
	Number of Counts:	1 2 3 4 or mor Felony F	e Property C	onviction	ns/Adjudicati	ons				1234	0	0
0	Number of Counts:  Other Prior  Number of Counts:	1	Property C	onviction	ns/Adjudicati	ons				1234		0
0	Number of Counts:  Other Prior  Number of Counts:  Prior Felon	1 2 3 4 or mor Felony F 1 2 - 3 4 or mor y Convice	Property C	conviction	ns/Adjudicati s Against Pe	ons				0		0
0	Number of Counts:  Other Prior  Number of Counts:  Prior Felon  Number	1	Property C	conviction	ns/Adjudicati	ons				0	0	0
0	Number of Counts:  Other Prior  Number of Counts:  Prior Felon	1	Property C	conviction	ns/Adjudicati s Against Pe	ons				0	0	0 0
• O	Number of Counts:  Other Prior  Number of Counts:  Prior Felon  Number of Counts:	1	eProperty C	onviction udication	ns/Adjudicati s Against Pe	ons				0	0	0
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• O	Number of Counts:  Other Prior  Number of Counts:  Prior Felon  Number of Counts:	1	eProperty C re ttions/Adj	onviction udication:	ns/Adjudicati s Against Pe	ons				0	0	▼ 0 0
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## DETERMINING VALUE OF PROPERTY

- STANDARD OF PROOF
- RESTITUTION ORDERED
- Unknown Err on Behalf of Defendant
- Staff Suggests that Probation Officers Include the Value of Property in Criminal Record Checks Researched and Prepared for the Court.
- Urge Pre-Sentence Report Writers to Include a Narrative Section (Page 4) on the number of felony convictions that were scored as misdemeanors

- 1. Make a normative policy decision to change the historical process of scoring prior record based on Virginia's current penalty structure and priors based on the penalty in place at the time of the offense. The policy change would have to be published in the Annual Report for legislative review and become effective July 1, 2019. Develop a resource so guidelines preparers can research the legislative history of Virginia's laws and laws in other states. Also, include in the list of violent offenses (§ 17.1-805) a date when offenses were defined as violent.
- 2. Define another measure or proxy, besides penalty structure to score prior record, to ensure that offenders with the same criminal history are scored the same no matter when the crime was committed or where the crime was committed. The policy change would have to be published in the Annual Report for legislative review. What resources would be required to make this change?
- 3. <u>Leave current policy in place.</u> Make recommendations for changes to the sentencing guidelines after enough data is collected. If the data suggested that the guidelines recommendations do not reflect judicial sentencing patterns or the guideline factors are not scored the same for all offenders with similar criminal histories, modifications would be presented to the Commission. If approved, recommendations would be published in the Annual Report for legislative review.
- 4. Make a normative policy decision to score only property offenses based on the penalty in place at the time of the offense. The policy change would have to be published in the Annual Report for legislative review. Develop a resource so that guidelines preparers can research legislative history of property crimes in Virginia. Commission would if the penalty structure in the other state would be used or would the date of the offense be used to match to Virginia's penalty structure at that time?

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# ocedure Delicin LEGISLATIVE CHANGE TO LARCENY THRESHOLD POSSIBLE SUGGESTED SOLUTIONS

3. Leave current policy in place. Make recommendations for changes to the sentencing guidelines after enough data is collected. If the data suggested that the guidelines recommendations do not reflect judicial sentencing patterns or the guideline factors are not scored the same for all offenders with similar criminal histories, modifications would be presented to the Commission. If approved, recommendations would be published in the Annual Report for legislative review.