

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. Quite 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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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@greenvillecountynva.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

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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 penalty.

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

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 penalty.

<u>Date/Place</u>	<u>Offense</u>	<u>Disposition</u>	<u>Date/Place</u>	<u>Offense</u>	<u>Disposition</u>
Example # 8: 8/7/83 Mayberry, NC	Burglary, three counts	Fifteen years	4/17/82 San Francisco, CA	1. Burglary of dwelling 2. Possession of stolen credit	Five years, three suspended

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

1. 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.

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, 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," the guidelines user:

- Is not restricted to the five most recent and serious prior conviction/sentencing events.
- Is 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 crimes 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 "BUR" 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.

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.

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 robbery and arson of an occupied building are considered crimes against a person and not property crimes.

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 "BUR" to be scored for this factor.

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.

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.

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

§ 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.](#)

[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)
18.2-370.1(A)			Take indecent liberties with child-custodian	SEX-3635-F6	1Y-5Y (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 Section A

Offender Name: _____

◆ **Primary Offense** _____ (scores for attempted/conspired offenses are in parentheses)

A. Attempted or conspired larceny (1 count) (1)

B. Statutory maximum penalty equals 5 years
 1 count 1
 2 counts 4
 3 counts 6

C. Statutory maximum penalty equals 10 years (1 count) 3

D. Grand larceny auto
 1 count 5
 2 counts 7
 3 counts 10

E. Grand larceny from person
 1 count 4
 2 counts 11

F. Grand larceny of a firearm (1 count) 1

G. Failure of bailee to return animal, aircraft, vehicle or boat (1 count) 4

H. Larceny of bank notes, checks or any book of accounts; Any other larceny offense with maximum penalty of 20 years
 1 count 2
 2 - 3 counts 4
 4 counts 6

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above
 Years: 5 - 11 1 34 - 44 4
 12 - 22 2 45 or more 5
 23 - 33 3

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts
 Years: Less than 1 0 23 - 33 3
 1 - 11 1 34 - 44 4
 12 - 22 2 45 or more 5

✓ ◆ **Prior Convictions/Adjudications** Total the maximum penalties for the 5 most recent and serious prior record events
 Years: Less than 2 0 21 - 36 3
 2 - 11 1 37 or more 4
 12 - 20 2

✓ ◆ **Prior Felony Larceny Convictions/Adjudications**
 Number of Counts: 1 2
 2 - 3 3
 4 or more 4

◆ **Other Prior Felony Property Convictions/Adjudications**
 Number of Counts: 1 - 4 1
 5 or more 2

◆ **Prior Felony Convictions/Adjudications Against Person**
 Number of Counts: 1 1
 2 or more 2

✓ ◆ **Prior Misdemeanor Convictions/Adjudications (Excludes Traffic)**
 Number of Counts: 1 - 4 1
 5 - 8 2
 9 or more 3

◆ **Prior Incarcerations/Commitments** _____ If YES, add 5 → 0

◆ **Prior Juvenile Record** _____ If YES, add 1 → 0

◆ **Legally Restrained at Time of Offense**
 None 0
 Other than parole/post-release, supervised probation or CCCA 1
 Parole/post-release, supervised probation or CCCA 2

Score

0

0

0

0

0

0

0

0

0

0

0

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 potential that for four prior larceny convictions, points for Prior 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)



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

EMENT (§ 18.2-111)

0

3

6

9

14

Score, go to Section C. →

Larceny/Section A

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

Larceny Section B

Offender Name: _____

◆ **Primary Offense** _____ (scores for attempted/conspired offenses are in parentheses)

A. Any attempted or conspired larceny (1 count).....(1)

B. Maximum penalty equals 5 or 10 years
 1 count3
 2 counts4
 3 counts7

C. Grand larceny auto
 1 count3
 2 counts4
 3 counts7

D. Grand larceny from person (1 count)6

E. Grand larceny of a firearm (1 count)1

F. Failure of bailee to return animal, aircraft, vehicle or boat (1 count)1

G. Larceny of bank notes, checks, etc. or any book of accounts
 1 count3
 2 counts4
 3 counts7

H. Any other grand larceny offense with a maximum penalty of 20 years
 1 count3
 2 counts4
 3 counts7

Score

◆ **Primary Offense Remaining Counts** Total the maximum penalties for counts of the primary not scored above

Years: Less than 220 32 - 422
 22 - 311 43 or more3

◆ **Additional Offenses** Total the maximum penalties for additional offenses, including counts

Years: Less than 10
 1 - 101
 11 - 212
 22 - 313
 32 - 424
 43 or more5

✓ ◆ **Prior Convictions/Adjudications** Total the maximum penalties for the 5 most recent and serious prior record events

Years: Less than 20
 2 - 191
 20 - 382
 39 or more3

✓ ◆ **Prior Misdemeanor Convictions/Adjudications** (Excludes Traffic)

Number of Counts: 1 - 22
 33
 4 or more4

◆ **Prior Incarcerations/Commitments** _____ If YES, add 7 →

◆ **Legally Restrained at Time of Offense** _____

None0
 Other than parole/post-release, supervised probation or CCCA4
 Parole/post-release, supervised probation or CCCA5

SCORE THE FOLLOWING FACTOR **ONLY IF PRIMARY OFFENSE IS H: EMBEZZLEMENT (§ 18.2-111)**

◆ **Amount of Embezzlement** _____

Amount: Less than \$15,0000
 \$15,000 or more3

Total Score _____

See Larceny Section B Recommendation Table to convert score to guidelines sentence. Then, go to Section D Nonviolent Risk Assessment and follow the instructions.



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



Larceny Section C

Offender Name: _____

Primary Offense Category I Category II Other
(scores for attempted/conspired offenses are in parentheses)

A. Attempted or conspired larceny (1 count)	(8)	(4)	(2)
B. Statutory maximum penalty equals 5 or 10 years			
1 count	20	10	5
2 counts	28	14	7
3 counts	40	20	10
C. Grand larceny auto			
1 count	32	16	8
2 - 3 counts	56	28	14
4 counts	72	36	18
D. Grand larceny from person			
1 count	40	20	10
2 counts	56	28	14
3 counts	68	34	17
E. Grand larceny of a firearm (1 count)	68	34	17
F. Failure of bailee to return animal, aircraft, vehicle or boat (1 count)	28	14	7
G. Larceny of bank notes, checks, etc. or any book of accounts			
1 - 2 counts	32	16	8
3 counts	96	48	24
H. Any other larceny offense with a maximum penalty of 20 years			
1 count	28	14	7
2 counts	44	22	11
3 counts	56	28	14

Score

0		
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Primary Offense Remaining Counts Assign points to each count of the primary not scored above and total the points

Maximum Penalty:	5, 10	1
(years)	20	2

Additional Offenses Assign points to each additional offense (including counts) and total the points

Maximum Penalty:	Less than 5	0
(years)	5, 10	1
	20	2
	30	3
	40 or more	5

Prior Convictions/Adjudications Assign points to the 5 most recent and serious prior record events and total the points

Maximum Penalty:	Less than 10	0
(years)	10, 20	1
	30	2
	40 or more	3

Prior Felony Larceny Convictions/Adjudications

Number of Counts:	1	1
	2	2
	3	3
	4 or more	4

Other Prior Felony Property Convictions/Adjudications

Number of Counts:	1	0
	2 - 3	1
	4 or more	2

Prior Felony Convictions/Adjudications Against Person

Number of Counts:	1	2
	2	4
	3 or more	6

Prior Felony Drug Convictions/Adjudications

Number of Counts:	1 - 2	1
	3	2
	4 or more	3

Prior Juvenile Record If YES, add 3

	0
	3

Legally Restrained at Time of Offense

None	0
Other than parole/post-release, supervised probation or CCCA	3
Parole/post-release, supervised probation or CCCA	4

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS H: EMBEZZLEMENT (§ 18.2-111)

Amount of Embezzlement

Amount:	Less than \$28,000	0
	\$28,000 - \$89,999	24
	\$90,000 or more	30

Total Score See Larceny Section C Recommendation Table for guidelines sentence range. Then, go to Section D Nonviolent Risk Assessment and follow the instructions.

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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

LEGISLATIVE CHANGE TO LARCENY THRESHOLD

POSSIBLE SUGGESTED SOLUTIONS

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. 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.
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?

LEGISLATIVE CHANGE TO LARCENY THRESHOLD POSSIBLE SUGGESTED SOLUTIONS

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.

LEGISLATIVE CHANGE TO LARCENY THRESHOLD POSSIBLE SUGGESTED SOLUTIONS

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?

LEGISLATIVE CHANGE TO LARCENY THRESHOLD POSSIBLE SUGGESTED SOLUTIONS

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LEGISLATIVE CHANGE TO LARCENY THRESHOLD

POSSIBLE SUGGESTED SOLUTIONS

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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.