

Virginia State Crime Commission

Grand Larceny

2008

GRAND LARCENY

Background

During the 2008 Session of the Virginia General Assembly, Senator W. Roscoe Reynolds introduced Senate Bill 351, which proposed raising Virginia's grand larceny threshold amount from \$200 to \$500.

This bill was referred to the Senate Courts of Justice Committee and was continued until 2009; a letter was sent to the Crime Commission to review this bill.

Staff reviewed the main larceny statutes of all fifty states, reviewed the Virginia Criminal Sentencing Commission report on grand larceny from 2000, and also consulted the Bureau of Labor Statistics Consumer Price Index Inflation Calculator to determine what the current value in today's dollars would be for \$200 in 1980. During the review of the larceny statutes of the fifty states, staff also conducted a cursory examination of specialized larceny statutes (e.g., larceny of a particular object, larceny from a merchant or shopkeeper, etc.).

Virginia Grand Larceny Threshold

Under Virginia law, grand larceny is defined by Va. Code § 18.2-95, which sets a general value of \$200 or more as the amount at which a larceny becomes a felony as opposed to a misdemeanor. Grand larceny in Virginia is punishable by imprisonment in a state correctional facility for not less than one nor more than twenty years or, in the discretion of the jury or court trying the case without a jury, be confined in jail for a period not exceeding twelve months or fined not more than \$2,500, either or both.

Another relevant larceny statute in the Virginia Code is the section that criminalizes conspiracy to commit grand larceny. The penalty for conspiracy to commit grand larceny is imprisonment in a state correctional facility for not less than 1 year nor more than 20 years. It should be noted that the penalty for conspiracy to commit grand larceny is greater than the penalty for conspiracy to commit any other non-capital felony. Under the general conspiracy statute, the

10 years imprisonment, or a felony punishable by up to one year in jail if the conspired crime had a maximum punishment of less than five years. Therefore, under Virginia law, the potential punishment for conspiracy to commit grand larceny is twice as great as the punishment for conspiracy to commit first degree murder.

The punishment for petit larceny in Virginia is a Class 1 misdemeanor, punishable by up to one year in jail. The punishment for a second conviction of petit larceny is confinement in jail not less than thirty days, up to a maximum of twelve months. For a third, or any subsequent offense of petit larceny, the penalty is a Class 6 felony.

If a person commits separate and distinct acts of embezzlement within a six month period, the prosecution may elect to aggregate the amounts involved in the separate actions, into one charge. In this manner, two separate acts of embezzlement in the amount of \$150 each may be prosecuted as either two misdemeanors or one felony.

Inflation Analysis

From 1966 to 1980, the grand larceny threshold amount in Virginia was \$100. In 1980, the grand larceny threshold amount was raised to its current level of \$200. According to the Bureau of Labor Statistics, \$200 in 1980 is equal to \$531.76 in 2008. Therefore, if a strict parity is to be maintained, the grand larceny threshold in Virginia should be increased to this amount.

50 State Survey

Staff reviewed the felony threshold amounts of all fifty states. In conducting the review, the most generic larceny statute of each state was used. It was found that 39 out of 50 states have felony larceny thresholds of \$500 or greater. The most common threshold amounts are \$500 and \$1,000, respectively. Specifically, 17 states have a threshold of \$500 and another seventeen states have a threshold of \$1,000. Another eight states have threshold amounts between \$200 and \$500. Only one other state, New Jersey, had a threshold equivalent to Virginia's threshold of \$200. No state had a threshold amount lower than Virginia's.

Two states have thresholds between \$500 and \$1,000 and three states have thresholds between \$1,000 and \$2,500. Twelve states have increased their larceny threshold amounts since the VCSA issued their report on this topic in 2000: Alabama, Arizona, Colorado, Kansas, Maryland, Mississippi, New Mexico, Oklahoma, South Dakota, Vermont, Wisconsin, and Wyoming. Two states, Maine and Missouri, have decreased their larceny threshold amounts since 2000.

Specialized Larceny Provisions

In addition to the review of other states' general larceny statutes, a brief review was also conducted of specialized larceny statutes. Many states create heightened penalties for larcenies involving particular objects or if the larceny occurs in a particular location, such as theft from a retail merchant. Examples include:

- Aqua cultural products from a commercial operation;
- Controlled substances;
- Dogs for the purpose of dog fighting;
- Livestock, domestic fowl, commercially farmed animals;
- Survival equipment;
- Testamentary instrument; and,
- Theft from an employer or theft from a retail merchant.

Virginia currently has a number of specialized larceny statutes in the Code of Virginia as well. Some examples include:

- Bull, cow, dog, horse, mule, pony, or steer;
- Credit card or credit card number;
- Firearms;
- Lottery;
- Milk crates;
- Poultry; and,
- Sheep, lamb, swine, or goat.

Legislation to Combat Organized Shoplifting

One of the main concerns with passing Senate Bill 351, and increasing the larceny

felony threshold amount in Virginia from \$200 to \$500, is that such a change might lead to an increase in the dollar amounts of merchandise that shoplifters would attempt to steal.

One solution to this problem could be to increase the felony threshold amount, but at the same time increase the penalty for stealing where the value of the larceny is \$200 or more, but less than \$500, which would be the new threshold for grand larceny. Criminals who commit larcenies in this intermediate range would be guilty of an Aggravated Class 1 misdemeanor, a new misdemeanor class that would carry up to 24 months in jail, double the current penalty for a Class 1 misdemeanor. Additionally, the statute creating this new crime of Aggravated Petit Larceny could specify that the defendant "shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended," which is the current language used to mandate some period of incarceration when a defendant is convicted of violating the terms of a protective order.

To combat criminal gangs who repeatedly engage in petit larcenies from retail establishments in an organized, methodical way, a new crime, conspiracy to commit petit larceny, could be created. This statute would complement the existing statute of conspiracy to commit grand larceny, which provides that the amounts stolen or subject to the conspiracy can be aggregated to reach a sum in excess of \$200. This new statute could be used in those rare circumstances where the evidence is insufficient to demonstrate that the conspirators intended to steal \$200 or more of goods. To this same end, a second offense of petit larceny could be elevated to an Aggravated Class 1 misdemeanor. To assist in the prosecution of these organized gangs, which travel throughout the state, multi-jurisdictional grand juries could be given the authority to investigate allegations of grand larceny, or conspiracy to commit larceny. (They already have the authority to investigate allegations of embezzlement). Finally, larceny could be included as a predicate crime for which criminal street gangs can be prosecuted under Virginia's criminal street gang statute.

Legislation Incorporating the Proposed New Class of Misdemeanor

If a new class of misdemeanor, the Aggravated Class 1 misdemeanor, were created, this would allow the General Assembly more flexibility in deciding appropriate punishments for misdemeanor crimes. Those crimes that are viewed as particularly egregious could have their punishments increased, without resorting to either mandatory minimum sentences or raising the crime to a felony. Of all of the misdemeanor crimes presently in the Virginia Code, those that logically could be considered for an increase would be those that involve either an act of violence or a hate crime or involve a repeat offense, and have a mandatory minimum sentence, proof that the legislature has already deemed those offenses to be more serious than other misdemeanors.

In addition, the following three misdemeanor offenses might also be considered for elevation to the new level of an Aggravated Class 1 misdemeanor, as they involve repeat offenses and violence or the threat of violence, or, in the instance of criminal street gang recruitment, the strong potential for future acts of violence:

- Va. Code § 18.2-46.3; recruitment of an adult into a criminal street gang;
- Va. Code § 18.2-57.2; domestic assault, if it is a second offense; and,
- Va. Code § 18.2-60.3; stalking, if it is a second offense.

Finally, if the felony threshold for larceny is increased to \$500, a number of fraud, embezzlement and larceny statutes should be similarly modified for the sake of consistency. These statutes can also be rewritten to incorporate the new intermediate category of aggravated petty larceny, involving amounts that are between \$200 and \$500.

Conclusion

At its October 14, 2008, meeting, the Crime Commission discussed the idea of raising the felony larceny threshold from \$200 to \$500, and creating a new class of misdemeanor, the Aggravated Class 1 misdemeanor, to punish larceny when the amount stolen is from \$200 to \$500. Staff was requested to draft a bill implementing these ideas, and the other proposals listed in this report. A draft bill was prepared, but was not taken up nor discussed at either the December 9, 2008, or January 13, 2009, Crime Commission meetings.