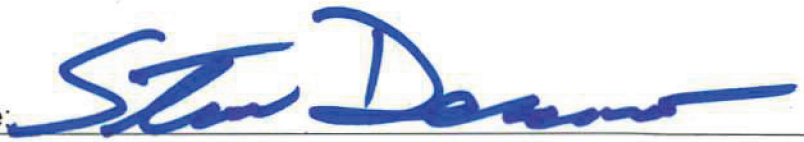
Commonwealth of Virginia

COUNTY OF FAIRFAX
4110 CHAIN BRIDGE ROAD, ROOM 114
FAIRFAX, VIRGINIA 22030-4047

STEVE DESCANO
COMMONWEALTH'S ATTORNEY

COMMONWEALTH'S ATTORNEY PROCEDURE MEMORANDUM	
	Date: 8/3/2020
Policy Title: GRAND LARCENY THRESHOLD & LARCENY THIRD OFFENSES	
Authorizing Signature: 	

GRAND LARCENY THRESHOLD

1. Policy Statement

Virginia's felony larceny threshold—the value of stolen goods that gives rise to felony charges instead of misdemeanor charges—is far too low. This threshold was raised from $200 to $500 in 2018 and from $500 to $1,000 in 2020. However, the current real value (adjusted for inflation) of the original $200 threshold is far in excess of the current $1,000 threshold.

The collateral consequences are vastly different for felonies and misdemeanors. Felony charges make it much more likely that people will be denied higher education, rejected for housing, and barred from a wide variety of jobs. As such, felony charges have devastating long-term effects on a person's future and the future of their family. Felony charges should be reserved for those who planned to steal something of significant value.

A felony larceny threshold of $1500 is within the mainstream of thresholds nationwide and is a threshold that has been proven to not increase the rate of theft. Fifteen states have felony larceny thresholds of $1500 or higher. Recent studies have shown that lower thresholds are outdated and do not deter crime better than a threshold of $1500. Without a deterrent effect associated with a threshold lower than $1500, there is no real justification for subjecting someone to the life-altering collateral consequences of a felony charge.

2. Policy

The threshold for proceeding with a felony grand larceny under VA Code Section 18.2-95 shall be $1500.[1] However, this requirement does not mean that a Commonwealth must proceed with a felony for every grand larceny over $1500. Discretion should be exercised for those cases where the dollar amount exceeds $1500 to determine whether a misdemeanor or a deferred disposition is appropriate. However, as a predicate to proceed with a felony, the dollar amount at issue from a single transaction must be at least $1500. This is the case regardless of the defendant's record.

In determining how to handle cases where the dollar amount is less than $1500, assistants should use their discretion as to the appropriate disposition. When reducing the felony charge, the assistant shall consider both misdemeanor and deferred disposition options. This office will no longer follow the outmoded idea that when a felony is reduced to a misdemeanor the defendant must enter a plea of guilty to, and be convicted of, the misdemeanor. In some situations, this may be appropriate, however, in others, it may not.

Consideration should be given, among other things, to the nature of the offense, the conduct of the accused, and the prior record and background of the accused, including any factors that may be root causes of the alleged criminal behavior such as underlying mental health issues, substance abuse, or poverty.

The assistant will listen to any input from the complaining witness. However, the assistant shall use independent judgment to determine the proper disposition. The assistant is to take a thoughtful and wholistic approach to the case and the underlying issues. The assistant must be able to articulate how their decision reflects the values of the community.

While jail may be appropriate in some cases, the mere fact that the case was reduced from a felony by itself does not warrant incarceration. The same is true for active probation. The conditions of any disposition should be tailored to, and therefore justified based upon, the specific facts of a case.

If an agreed disposition cannot be reached with defense counsel, the assistant shall amend the charge to petit larceny under Code Section 18.2-96. The assistant shall then set the matter on the 2J misdemeanor docket for trial and ask the court to recognize any witnesses present for that day and time. The assistant shall then notify the proper administrative personnel in the Commonwealth's Attorney's Office for scheduling purposes so that the assistant can continue with the prosecution of the case on the scheduled date in the General District Court.

LARCENY THIRD OFFENSES

1. Policy Statement

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[1] This policy does not apply to larceny with intent to sell (VA Code 18.2-108.01), or any other felony which the offense may qualify as. If the offense qualifies as a separate and distinct felony, the assistant may exercise their discretion as to whether it is appropriate to proceed under that code section.

Virginia Code Section 18.2-104 is an enhancement statute that transforms a misdemeanor larceny offense into a felony offense when a person has been convicted of two or more prior misdemeanor larceny offenses. Not only does the application of this law saddle too many people with unnecessary felony convictions, but it contributes to overincarceration via increased jail admissions and longer jail sentences and leads to excessive probationary periods for what the law otherwise deems a misdemeanor offense.

As noted above, the collateral consequences are vastly different for felonies and misdemeanors. Additionally, the costs of incarceration are massive both for the offender and the community he or she returns to. The objectives of the criminal justice system can be fully achieved by handling such cases as misdemeanors and exercising greater control over the disposition of the case. Such a course of action accomplishes a fairer and more just result without a negative impact on public safety.

2. Policy

This office will no longer proceed with the prosecution of larceny third offenses (LTO) as felony offenses, under Code Section 18.2-104, when the current offense charged is petit larceny under Code Section 18.2-96.[2]

This policy shall not exclude or prohibit plea deals whereby: (i) an agreement is reached in which the defendant will enter a plea to LTO in lieu of another felony charge, or (ii) the defendant elects to enter a plea to LTO over a misdemeanor offer.[3] Outside of these scenarios, cases charged as LTO shall be treated as a misdemeanor petit larceny offenses.

Assistants shall employ the decision-making process as set forth above in determining the proper disposition in the case. In addition to the factors previously noted, special consideration shall be given to cases where items may have been taken out of necessity (food, diapers, childcare items, etc.) or occurred as a result of poverty.

If an agreed disposition cannot be reached with defense counsel, the assistant shall amend the charge to petit larceny under Code Section 18.2-96. The assistant shall then set the matter on the misdemeanor docket for trial and ask the court to recognize any witnesses present for that day and time. The assistant shall then notify the proper administrative personnel in the Commonwealth's Attorney's Office for scheduling

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[2] Given that §18.2-104 permits the use of "any offense deemed to be or punished as larceny under any provision of the Code" as a predicate offense, this policy is limited to cases where the current offense charged is petit larceny.

[3] In either scenario, the assistant shall fully explain the basis for the felony indictment **in writing** and obtain the written approval of a designated member of leadership. This documentation and approval must be uploaded to ePros no later than **3 full business days prior to** the grand jury.

urposes so that the assistant can continue with the prosecution of the case on the scheduled date in the General District Court.