LATE

HB 2561, HD1

Proposed SD1

Relating to the Administration of Justice

Enacts recommendations of the penal code review committee convened pursuant to HCR155 (2015). Effective 1/7/2059 (Proposed SD1)

LATE TESTIMONY

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:
H.B. NO. 2561, H.D. 1, PROPOSED S.D. 1, RELATING TO THE ADMINISTRATION OF JUSTICE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Monday, March 28, 2016 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General (the "Department") opposes certain parts of the bill, specifically relating to the threshold dollar amounts for theft offenses and to sentencing for methamphetamine trafficking offenses. The Department has concerns about the proposed section 70 of the bill, starting at page 133, and offers comments. The Department supports the rest of the bill.

The purpose of this bill is to enact the recommendations of the 2015 Penal Code Review Committee.

The Department has concerns about the amendments proposed in part V of the bill by sections 37 to 39 (pages 72-74), which increase the threshold dollar amounts for the offenses of Theft in the Second Degree, Theft in the Third Degree, and Theft in the Fourth Degree. And the Attorney General has concerns about the amendments proposed in part VIII of the bill by sections 52 to 56 (pages 93-100), which eliminate mandatory sentencing provisions for the methamphetamine trafficking offenses.

In part V, the bill increases the threshold value of property and services from $300 to $750 for the offense of Theft in the Second Degree, and from $100 to $250 for the offense of Theft in the Third Degree. The bill also increases the maximum value of property and services for Theft in the Fourth Degree from $100 to $250. The Department has concerns about these amendments.

The Department recommends that the threshold values for these theft offenses not be increased. The current values of $300 and $100 are appropriate amounts. To put it in perspective, the state minimum wage was $6.25 per hour in 2003. The current minimum wage is $8.50 per hour. Currently, a minimum wage worker would have to work at least forty hours, over a full week, to replace property worth $300. The $300 felony theft amount remains a significant amount. To make $750 (pretax), a minimum wage worker would have to work eighty-nine hours, or over two weeks. That would be half of the worker's monthly salary before taxes and other deductions.

Increasing the theft threshold value from $300 to $750 would diminish the seriousness of many theft crimes and reduce the deterrent impact of the theft offenses. Under this bill, theft of property or services valued between $250 and $750 would only be a misdemeanor. As such, the many convicted misdemeanor offenders, who are felony offenders under the current law, would not receive the level of appropriate treatment, counseling, and supervision that they would otherwise receive from felony probation services. This bill would reduce the deterrent effect against crime, while at the same time reducing the level of services to offenders, which itself may increase the rate of recidivism and the number of victims. Thieves know the difference between misdemeanor and felony offenses. With the proposed amendments, thieves will know they can steal up to $750 in property without triggering felony prosecution. Property owners, particularly small business owners, may suffer greater losses, and are unlikely to pass all of those losses to their customers.

In part VIII, the bill eliminates mandatory sentencing provisions for the methamphetamine trafficking offenses. The Department has concerns about these amendments, which will significantly reduce the consequences of trafficking methamphetamine. Methamphetamine, often called "ice", is one of the most commonly abused drugs in Hawaii, and by far the most dangerous. Ice destroys families and lives and is frequently a factor in violent and property crimes.

Section 52, on pages 93-96, amends the offense of Methamphetamine Trafficking in the First Degree by removing from its definition: (1) the possession of one ounce or more of methamphetamine; and (2) the distribution of one-eighth of an ounce or more of methamphetamine. Those prohibitions are then added, in section 54 of the bill, at pages 97-98,

to the offense of Promoting a Dangerous Drug in the First Degree. These amendments would allow someone who committed these methamphetamine trafficking offenses to get probation. Under current law, these trafficking offenders would be sentenced to indeterminate terms of imprisonment.

In section 56, at pages 99-100, the bill repeals the offense of Methamphetamine Trafficking in the Second Degree. That offense prohibits the distribution of methamphetamine in any amount; and someone convicted of that offense must be sentenced to an indeterminate term of imprisonment, with a mandatory minimum term of imprisonment ordered by the court. By repealing this offense, a person who distributes any amount of methamphetamine will be eligible for probation.

The current methamphetamine trafficking offenses were adopted in 2006 to address the serious problem of methamphetamine abuse in our community. Methamphetamine has ruined many lives. The trafficking offenses were intended to target the distributors and sellers who were providing the drug to vulnerable individuals, getting them addicted to the substance, and making profits from their addiction. This bill will allow these traffickers to get probation.

Proposed section 70 of the bill, at pages 133-135, attempts to mandate the application of new methamphetamine distribution and possession offenses to offenders who committed the offenses before the effective date of the Act, but who were not yet charged, or whose cases have not yet reached final judgment. Section 70 provides:

> This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date; provided that Sections 54, 55, and 56 shall apply to offenses committed before the effective date of this Act. . . .

The provisions of section 70 are unclear and questionable in application. It is not clear what "shall apply" means to the earlier offenses. To begin with, section 70 requires the application of section 56 of the bill, which repeals the provisions of the offense of Methamphetamine Trafficking in the Second Degree, but it does not require the application of section 52, which repealed some of the provisions of the offense of Methamphetamine Trafficking in the First Degree.

The bill does not simply change the penalty for an offense; it repeals offenses, creates new offenses, and requires defendants to be retroactively prosecuted and/or resentenced on one of the new offenses. The elements of a new offense may be the same or similar to a repealed

offense, but it is a different offense, with different penalties. If enacted, the proposed retroactive application raises several issues. For example, it is not clear if a defendant can be prosecuted for an offense that did not exist at the time the defendant committed the offense, when another offense with the same material elements did exist. It is not clear if a defendant can be convicted and sentenced for an offense for which he was never charged or prosecuted. It is not clear if a defendant needs to be charged and prosecuted on the new offense. Finally, it is not clear if the State prosecutor, who has charged and prosecuted a defendant under a valid and existing law, is required to undo that prosecution and start anew.

In paragraph 2, on page 134, at line 6, the bill seems to indicate that a defendant who was originally charged under one of the repealed provisions under section 52 or 56, but who has not yet been convicted under that offense, may be prosecuted under one of the new offenses after the filing of the new charge. That seems to suggest that the State would need to bring an amended indictment, complaint, or information. It is uncertain whether that would always be possible without a new probable cause determination.

In paragraph 3, on page 134, at lines 7-11, the bill seems to indicate that a defendant who has been convicted and is awaiting sentencing on an offense that has been repealed under this bill, shall be sentenced under one of the new offenses. The bill does not, however, address what happens to the charges for which he has already been convicted, and how the defendant will be sentenced on a new offense without new charges being filed and defendant being convicted on the new offense.

In paragraph 4, on page 134, at lines 12-20, the bill seems to indicate that a defendant who has been convicted and sentenced, and whose case is on appeal, shall be entitled to be resentenced under one of the new offenses, if the judgment is affirmed on appeal. But if a judgment is affirmed on appeal, then the conviction is a final judgment, and the provisions of this bill would amount to the Legislature overturning a final conviction and thereby possibly violating the separation of powers doctrine. The paragraph also does not address the issue of resentencing a defendant for an offense for which the defendant was never charged or prosecuted.

Aside from the points of opposition related to the threshold amount for the theft offenses and sentencing for methamphetamine trafficking offenses described above, and the concerns raised about the new proposed section 70, the Department supports the rest of the bill.

Thank you for the opportunity to testify.

LATE TESTIMONY

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March 28, 2016

Chair Keith-Agaran, Vice-Chair Shimabukuro, and fellow members of the Senate Committee on Judiciary & Labor, the White Collar Crime Unit of the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **strong opposition to Part V, Section 42** of H.B. 2561 HD 1 Proposed SD 1. That specific proposal was submitted by the penal code review committee.

Part V, Section 42 attempts to repeal subsection (a) of Section 708-893 of the Hawaii Revised Statutes (HRS), which reads: "A person commits the offense of Use of a Computer in the Commission of a Separate Crime if the person: (a) Intentionally uses a computer to obtain control over the property of the victim to commit theft in the first or second degree".

HRS Section 708-893 was originally enacted in 2001. Subsection (a) was added to HRS Section 708-893 in 2006. Subsection (a) was introduced during the 2006 legislative session as H.B. 2535 and S.B. 2434, and it was subsequently enacted into law on May 25, 2006, as Act 141. Significantly, no member of the 2006 legislature voted against the bills that ultimately became subsection (a) to HRS Section 708-893. No member of the 2006 House of Representatives and no member of the 2006 Senate voted against what became subsection (a) to HRS Section 708-893. Subsection (a) received unanimous support from every member of the 2006 legislature that was present to vote. It's unclear whether the penal code review committee was aware that the 2006 legislature unanimously approved the addition of subsection (a) to HRS Section 708-893.

In any event, since 2006, the legislature has taken a number of steps to strengthen Hawaii's computer crime laws. Indeed, since 2006, the legislature has updated every Hawaii computer crime law and strengthened the penalties for those crimes. Hawaii's updated computer crime laws now reflect the current view of the legislature and the general public about the seriousness of the problem of cybercrime.

That's why it was so troubling to see this proposal emerge from the penal code review committee. Simply put, the proposal to repeal subsection (a) to HRS Section 708-893 is a step backward. It will weaken Hawaii's computer crime laws – indeed, it will completely repeal one of the most important statutes that Hawaii has to address the problem of computer crime.

The rational for the repeal of subsection (a) is found on page 70 of *the original* H.B.

2561. The rational states, "[r]epealing a provision that subjects a person to a separate charge and enhanced penalty for using a computer to commit an underlying theft crime because it seems unduly harsh, given the prevalence of 'smart phones' and other computer devices". That is the sole justification for the repeal of a law that passed with unanimous support from the 2006 legislature!

The rational for the repeal of subsection (a) is illogical and makes no sense. What does the prevalence of electronic devices have to do with how society views the seriousness of computer-facilitated crime? And, what does the prevalence of electronic devices have to do with how the legislature classifies criminal conduct that is facilitated by electronic devices? It doesn't matter whether there are one million, one billion, or even one trillion electronic devices on Earth. There is simply no logical connection between how many devices there are on Earth and how society views the seriousness of those who use electronic devices to facilitate fraud, and how the legislature classifies criminal conduct that is facilitated by those electronic devices. Simply put, the prevalence of devices and how the legislature views the criminal use of those devices are two are entirely separate issues. In short, H.B. 2561 HD 1 Proposed SD 1's stated rational for repealing subsection (a) to HRS Section 708-893 is unpersuasive and tenuous, at best.

The "Report of the Committee to Review and Recommend Revisions to the Hawaii Penal Code" dated December 30, 2015 (hereinafter "Report"), offered the same rational, i.e., citing the "prevalence of electronic devices" argument. See *infra*. But, the Report added another rational. On page 51, the Comment states, "The removed offenses, first and second degree theft, are already subject to prosecution as a class B and C felony, respectively". However, that's another non sequitur. It simply doesn't follow that, since first and second degree theft are already subject to prosecution as a class B and C felony, subsection (a) to HRS Section 708-893 should therefore be repealed. Indeed, if the Comment's rational was valid, it would be a justification to repeal the entire statute, not just subsection (a). Why? Because, every "separate crime" that is set forth in HRS Section 708-893 is "already subject to prosecution" as a stand-alone crime – not just first and second degree theft, but all nine of the crimes that are set forth in subsection (b) are "already subject to prosecution" as stand-alone crimes. Thus, it's not surprising that the statute is called "Use of a Computer in the Commission of a Separate Crime". By definition, every "separate crime" is a crime that is "already subject to prosecution" as a stand-alone crime. But, that's not a logical or coherent rational for repealing only a selective portion of the statute.

Respectfully, the Comment seems to miss the point of HRS Section 708-893. HRS Section 708-893 was enacted because society, through their elected representatives, views the use of a computer in the commission of certain crimes as an aggravating circumstance that warrants an increased penalty. That's why the legislature chose to classify the crime as "one class or grade, as the case may be, greater than the offense facilitated". See HRS Section 708-893(2). In short, the whole point of HRS Section 708-893 is to treat the use of a computer as an aggravating circumstance, just like the legislature treated the misuse of "personal information" as aggravating circumstance when it adopted Hawaii's identity theft laws. When the legislature enacted Hawaii's identity theft laws, it chose to subject the offender to increased penalties for committing first and second degree theft. Why? Because, the legislature deemed the use of "personal information" to facilitate theft an aggravated form of theft. Similarly, when the legislature adopted subsection (a) to HRS Section 708-893, it deemed the use of a computer to

facilitate theft an aggravated form of theft, and accordingly, like the identity theft statutes, provided for increased penalties. To reiterate, every member of the 2006 legislature who was present to vote, in fact voted to support the bills that added first and second degree theft to HRS Section 708-893.

The Comment also points out that, by adding first degree theft to HRS Section 708-893, the legislature increased the penalty for first degree theft from a class B felony to a class A felony when a computer is used to facilitate the theft. However, that fact was well known to the 2006 legislature. Indeed, it was brought to the attention of the legislature by the written testimony submitted by the Office of the Public Defender. Their written opposition, notwithstanding, the 2006 legislature voted to add first and second degree theft to HRS Section 708-893. In short, the Comment to the 2015 Penal Code Review Committee Report regarding the increased penalties for first degree theft constitutes old information that was considered and rejected – unanimously!

The Comment also indicates that, "due to time constraints", the committee did not review statistics about the prosecution of subsection (a) to HRS Section 708-893. Had the committee requested, the Department of the Prosecuting Attorney for the City and County of Honolulu would have provided the following statistics for the period from 2006, when subsection (a) was enacted, through February 2016:.

51 – Total cases referred for prosecution

11 – Total cases where prosecution was declined

40 – Total cases charged (40 defendants)

15 – Total defendants who received either a DAG (5) or DANC (10) plea

10 – Total defendants who were sentenced to probation

5 – Total cases that were dismissed as part of a plea agreement

9 – Total defendants sentenced to prison (5: 20 years, 3: 10 years, 1: 8 years youthful)

> Note: Of the 9 sentenced to prison, 3 had a prior felony record and were therefore not eligible for probation

1 – Total cases pending prosecution.

As these statistics demonstrate, of the 40 defendants charged with committing the offense of Use of a Computer in the Commission of a Separate Crime, 30 received either a deferral of their plea, probation, or had their computer charged dismissed altogether as part of a plea agreement. In other words, 75% of all defendants charged with Use of a Computer did <u>not</u> receive a prison term. Put differently, only about 25% received a prison term, and of the 9 who did receive a prison term, 3 of them were ineligible for probation based on their prior felony record. And, 3 of the 9 had their sentenced reduced to 10 years as part of a plea agreement. In

short, a total of 9 defendants have been sentenced to prison since 2006. That equates to an average of 1 defendant per year since subsection (a) was added to HRS Section 708-893 in 2006. Clearly, subsection (a) is not contributing in any meaningful way to Hawaii's prison over-population problem. 1 person per year! As the statistics clearly show, 3 out of 4 defendants are being sentenced to court-supervision, as opposed to prison. And, regarding the 9 defendants who received a prison term, the facts in those cases showed that the defendants' criminal conduct was especially egregious and involved repetitive conduct, multiple victims, high-dollar losses, additional charges, and/or a complete unwillingness to take responsibility or make restitution.

But, how did the Hawaii Paroling Authority (HPA) treat those 9 defendants who were sentenced to prison for committing the offense of Use of a Computer in the Commission of a Separate Crime? According to HPA's Annual Reports for the years 2007 through 2014, the HPA set the following minimum prison terms for inmates convicted of the offense of Use of a Computer in the Commission of a Separate Crime:

2007 – No parole action taken. 0 inmates were covered by HRS Section 708-893

2008 – 1 person. Minimum: 10 years

2009 – No parole action taken. 0 inmates were covered by HRS Section 708-893

2010 – No parole action taken. 0 inmates were covered by HRS Section 708-893

2011 – 1 person. Minimum: 1.5 years

2012 – 1 person. Minimum: 8 years

2013 – 7 people. Average minimum: 3.5 years

2014 – 2 people. Average minimum: 5.75 years

2015 – HPA's Annual Report not yet available.

As HPA's statistics reflect, with the exception of the 2008 inmate, the remaining inmates have been ordered to serve an average prison term that is less than one-third of their maximum sentence. To put these statistics in perspective, therefore, during the period from 2007 to 2014, only 12 people statewide were sentenced to prison for committing the offense of Use of a Computer in the Commission of a Separate Crime, and all but one of those will be eligible for parole after serving only about one-third or less of their sentence! Clearly, HPA's statistics refute any suggestion that subsection (a) to HRS Section 708-893 is "unduly harsh". It fact, the statute is fair and just, and defendants are being treated equitable, notwithstanding their serious criminal conduct.

HPA's statistics, combined with the statistics from the Honolulu Prosecutor's Office, demonstrate that, since subsection (a) was added to HRS Section 708-893 in 2006:

(1) 75% of the defendants who were charged with committing the offense of Use of a Computer in the Commission of a Separate Crime were sentenced to court supervision or had their charge dismissed entirely as part of a plea agreement;

(2) Only about 25% of those who were charged with committing the offense of Use of a Computer in the Commission of a Separate Crime were sentenced to prison;

(3) Of the 25% who were sentenced to prison, about half had their charges reduced as part of a plea agreement or were ineligible to receive a sentence of probation; and

(4) Of the 12 inmates statewide who were sentenced to prison, almost all of them were ordered to serve only about one-third of their sentence before becoming eligible for parole.

Had the Penal Code Review Committee had access to these statistics, it's inconceivable that they would have deemed the statute "unduly harsh". On the contrary, these statistics demonstrate that the statute is both fair and just, and that it is being applied in a fair and equitable manner by the courts, the paroling authority, and law enforcement.

Further, on February 23, 2016, the Committee on Judiciary and Labor held a hearing on SB 2964 (another bill that was the product of the Penal Code Review Committee). During the hearing, the Committee questioned the spokesperson for the Penal Code Review Committee, the Honorable Steven S. Alm. Judge Alm, speaking for the Penal Code Review Committee, stated that the rational for the repeal of subsection (a) to HRS Section 708-893 was that, "due to the prevalence of smart phones in today's society, there was a concern that those who commit theft would also be caught-up in the Use of a Computer statute". Neither Judge Alm nor the Penal Code Review Committee offered this Committee any statistics or evidence to demonstrate that their concern was, in fact, a legitimate concern.

Following the February 23rd hearing, the Department of the Prosecuting Attorney reviewed their internal statistics and found that their statistics invalidate the Penal Code Review Committee's "concern". For example, in 2014, the Honolulu Prosecutor's Office filed 2619 theft cases against 2619 individuals. In 2015, the Honolulu Prosecutor's Office filed 2686 theft cases against 2686 individuals. How many of those individuals got "caught-up" in the Use of a Computer statute? How many of those individuals were charged with committing the offense of Use of a Computer in the Commission of a Separate Crime? In 2014, out of the 2619 individuals who were charged with committing theft, only one person was also charged with committing the offense of Use of a Computer in the Commission of a Separate Crime. In 2015, out of 2686 individuals who were charged with committing theft, only one person was also charged with committing the offense of Use of a Computer in the Commission of a Separate Crime. Thus, any "concern" that the prevalence of smart phones is resulting in thieves also getting "caught-up" in the Use of a Computer statute is completely unfounded. Nothing could be further from the truth. Simply put, the Penal Code Review Committee's "concern" is refuted by the statistics and evidence, and it certainly doesn't constitute a legitimate basis to repeal a statute that was unanimously supported by every member of the 2006 legislature.

Lastly, it's worth pointing out that the Comment to the Penal Code's report emphasized

that a "significant minority" of the committee was opposed to repealing subsection (a) to HRS Section 708-893. The law enforcement stakeholders in particular opposed the repeal of subsection (a) to HRS Section 708-893.

In conclusion, Part V, Section 42 is a controversial measure, and is strongly opposed by law enforcement. It attempts to undo the unanimous vote of the 2006 legislature, based on a razor thin, entirely unpersuasive rational. Therefore, that specific measure should be rejected.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly opposes the passage of Part V, Section 42 of H.B. 2561 HD 1 Proposed SD 1. **The Department of the Prosecuting Attorney respectfully requests that you strike and remove Part V, Section 42 from H.B. 2561 HD 1 Proposed SD 1**, and that you reject the recommendation to repeal subsection (a) to HRS Section 708-893. Thank you for the opportunity to testify on this matter.

The Judiciary, State of Hawai'i

Testimony to the
Senate Committee on Judiciary and Labor
Senator Gilbert Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Monday, March 28, 2016, 9:00 a.m.
State Capitol, Conference Room 016

By

R. Mark Browning
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

Bill No. and Title: House Bill No. 2561, House Draft 1, Proposed Senate Draft 1 Relating to the Administration of Justice

Purpose: Enacts recommendations of the penal code review committee, convened pursuant to HCR 155 (2015).

Judiciary's Position:

The Judiciary respectfully notes a concern with one provision relating to the release of records when applied to juvenile records.

We respectfully suggest a friendly amendment, below, to address our concern.

House Bill No. 2561, House Draft 1, Proposed Senate Draft 1 allows the prosecuting attorney and counsel for the defendant to petition the court for all the records collected for the mental health examiners (see page 7, from lines 18). As applied to juveniles and juveniles records, this language may be overbroad and against statutory and public policy, both of which mandate confidentiality. This is particularly exacerbated by the possibility of releasing the confidential information and records in digital format. The "protective" ability of the court to apply "conditions the court determines appropriate" would be extremely difficult to enforce even if these confidential records are provided in hard copy or digital format. For example, if a court

orders that said information shall not be used, directly or indirectly, in any other case against the defendant, there would be no reasonable way for anyone to know about a breach. In fact, the person who allegedly disobeyed this order may not be aware of the origin of the information or the relevant court order. The same type of problem also applies to the prohibition against re-disclosure except to the extent permitted by law. Besides state law, we also need to confront the violation of federal laws such as HIPAA (medical records), FERPA (school records), and releasing records of substance abuse evaluations and reports, which may be included in these juvenile records.

In a recent publication by the Justice Law Center, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records* (February 2016), the authors stated at page two "Research confirms—and the law recognizes—that youth have the capacity for change and rehabilitation, and yet records continue to erect barriers to youths' success as they grow into adulthood. Modern technology exacerbates the problem as it facilitates access . . . ." The publication examines the collateral consequences faced by juveniles in the areas of education and employment.

We recommend a friendly amendment by adding the following qualifying language (in bold *and italics*) from Section 4, page 7, from line 18:

> (8) The court shall obtain all existing relevant medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other [~~statutes,~~] statute, and make [~~such~~] the records available for inspection by the examiners[~~.~~] in hard copy or digital format. The court may order that the records so obtained be made available to the prosecuting attorney and counsel for the defendant in either format, subject to conditions the court determines appropriate[.] ***provided that juvenile records shall not be made available unless constitutionally required.***

Thank you for the opportunity to provide testimony on this measure.

LATE TESTIMONY

THE PEW CHARITABLE TRUSTS

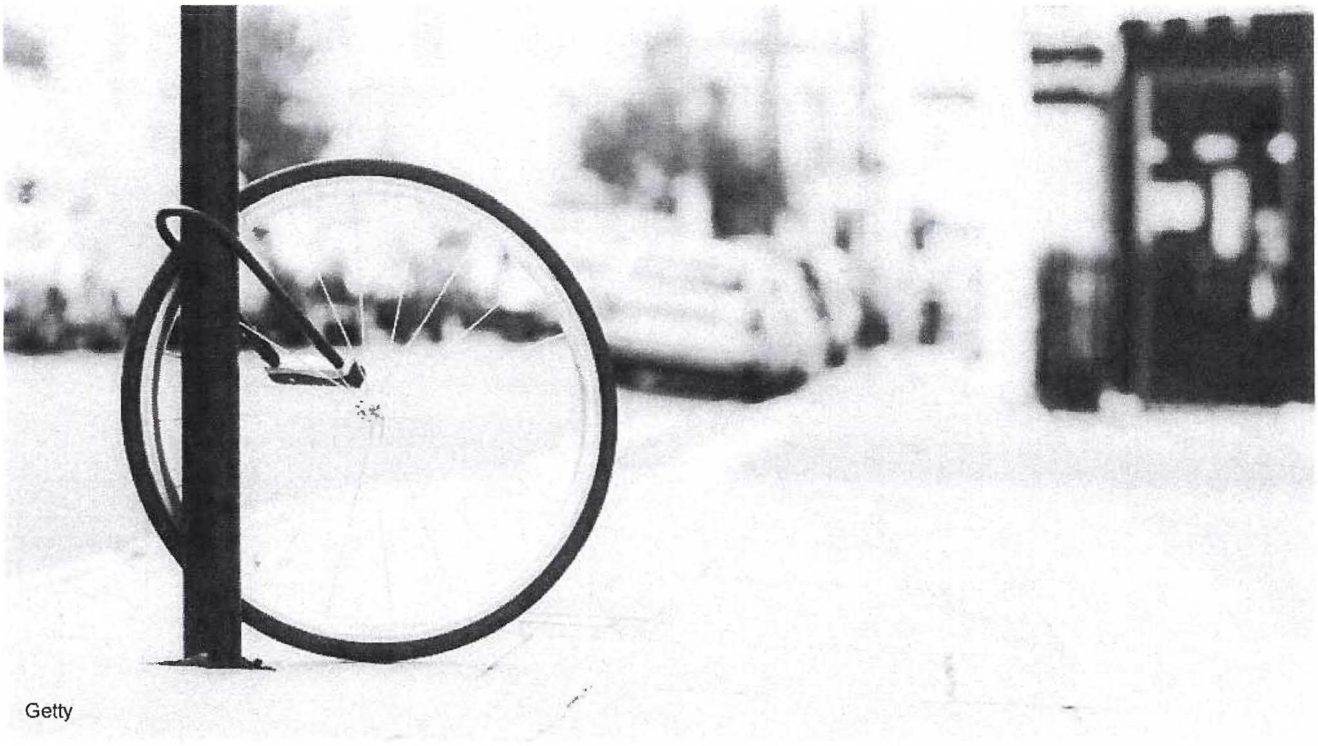
ISSUE BRIEF

The Effects of Changing State Theft Penalties

Increased felony thresholds have not resulted in higher property crime or larceny rates

February 23, 2016

Public Safety Performance Project



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Overview

Since 2001, at least 30 states have raised their felony theft thresholds, or the value of stolen money or goods above which prosecutors may charge theft offenses as felonies, rather than misdemeanors.[1] Felony offenses typically carry a penalty of at least a year in state prison, while misdemeanors generally result in probation or less than a year in a locally run jail. Lawmakers have made these changes to prioritize costly prison space for more serious offenders and ensure that value-based penalties take inflation into account. A felony theft threshold of $1,000 established in 1985, for example, is equivalent to more than twice that much in 2015 dollars.[2]

Critics have warned that these higher cutoff points might embolden offenders and cause property crime, particularly larceny, to rise.[3] To determine whether their concerns have proved to be true, The Pew Charitable Trusts examined crime trends in the 23 states that raised their felony theft thresholds between 2001 and 2011, a period that allows analysis of each jurisdiction from three years before to three years after the policy change. Pew also compared trends in states that raised their thresholds during this period with those that did not.

This chartbook illustrates three important conclusions from the analysis:

- Raising the felony theft threshold has no impact on overall property crime or larceny rates.
- States that increased their thresholds reported roughly the same average decrease in crime as the 27 states that did not change their theft laws.
- The amount of a state's felony theft threshold—whether it is $500, $1,000, $2,000, or more—is not correlated with its property crime and larceny rates.

Figure 1

At Least 30 States Have Raised Felony Theft Thresholds Since 2001

Higher sums are designed to take inflation into account

Year of change	State	Previous threshold	Enacted threshold	Legislation
2001	Oklahoma	$50	$500	S.B. 397
2002	Missouri	$150	$500	H.B. 1888
2003	Alabama	$250	$500	H.B. 491
	Mississippi	$250	$500	H.B. 1121
2004	Kansas	$500	$1,000	H.B. 2271
	Wyoming	$500	$1,000	S.F. 66
2005	South Dakota	$500	$1,000	S.B. 43
2006	Arizona	$250	$1,000	H.B. 2581
	New Mexico	$250	$500	H.B. 80
	Vermont	$500	$900	S.B. 265
2007	Colorado	$500	$1,000	S.B. 260
2009	Delaware	$1,000	$1,500	H.B. 113
	Maryland	$500	$1,000	H.B. 66
	Montana	$1,000	$1,500	S.B. 476
	Oregon	$750	$1,000	H.B. 2323
	Washington	$250	$750	S.B. 6167
2010	Arkansas	$500	$1,000	S.B. 570
	California	$400	$950	A.B. 2372
	Illinois	$300	$500	S.B. 3797
	South Carolina	$1,000	$2,000	S.B. 1154
	Utah	$1,000	$1,500	S.B. 10
2011	Nevada	$250	$650	A.B. 142
	Ohio	$500	$1,000	H.B. 86
2012	Georgia	$500	$1,500	H.B. 1176
2013	Colorado	$1,000	$2,000	H.B. 1160
	Indiana	$250	$750	H.B. 1006
	North Dakota	$500	$1,000	S.B. 2251
2014	Alaska	$500	$750	S.B. 64
	Louisiana	$500	$750	H.B. 791
	Mississippi	$500	$1,000	H.B. 585
2015	Alabama	$500	$1,500	S.B. 67

	Nebraska	$500	$1,500	L.B. 605
	Texas	$1,500	$2,500	H.B. 1396

Note: The District of Columbia raised its felony theft threshold in 2010 but is not included in this report because its crime data are not directly comparable with state crime statistics.

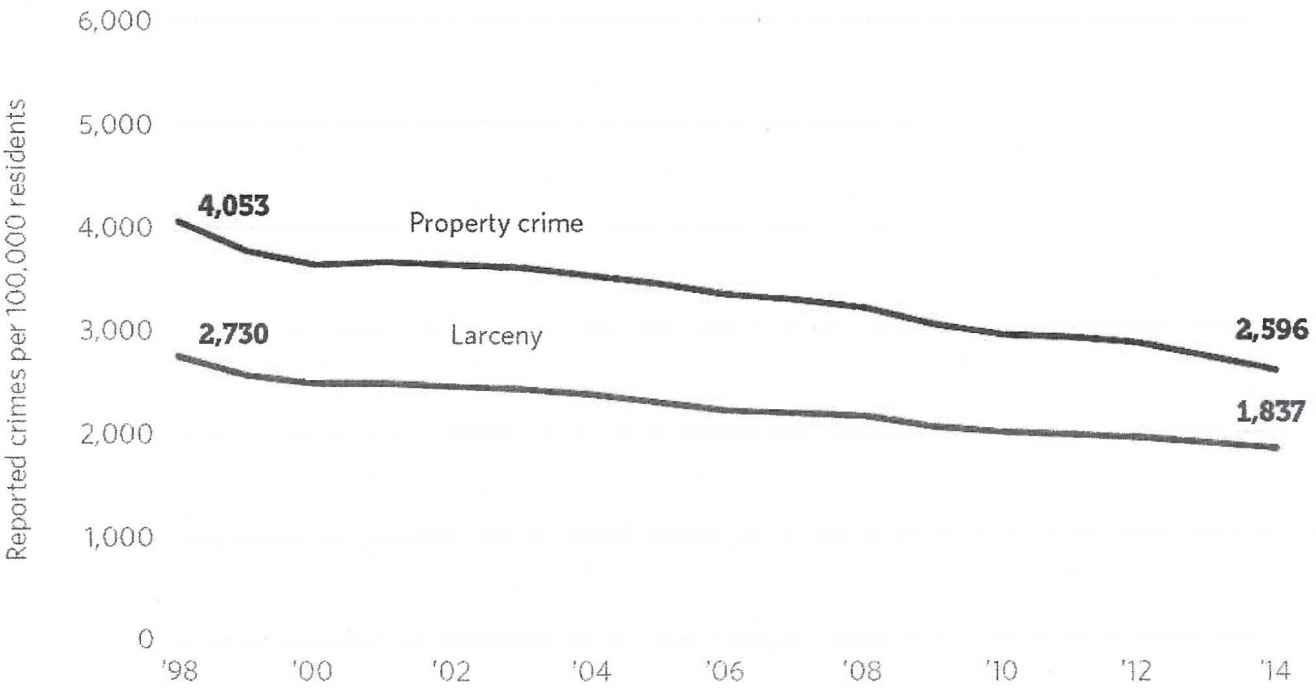
Source: Pew's analysis of legislative information from the National Conference of State Legislatures

Since 2001, at least 30 states have raised their felony theft thresholds, including three—Alabama, Colorado, and Mississippi—that did so twice.[4] In terms of percentage, Oklahoma's tenfold increase, from $50 to $500 in 2001, was the largest in the nation.

Figure 2

U.S. Property Crime and Larceny Rates Have Fallen by a Third

Improved policing and anticrime technology cited among reasons for decline



Source: Federal Bureau of Investigation, *Crime in the United States* series, 1998-2014

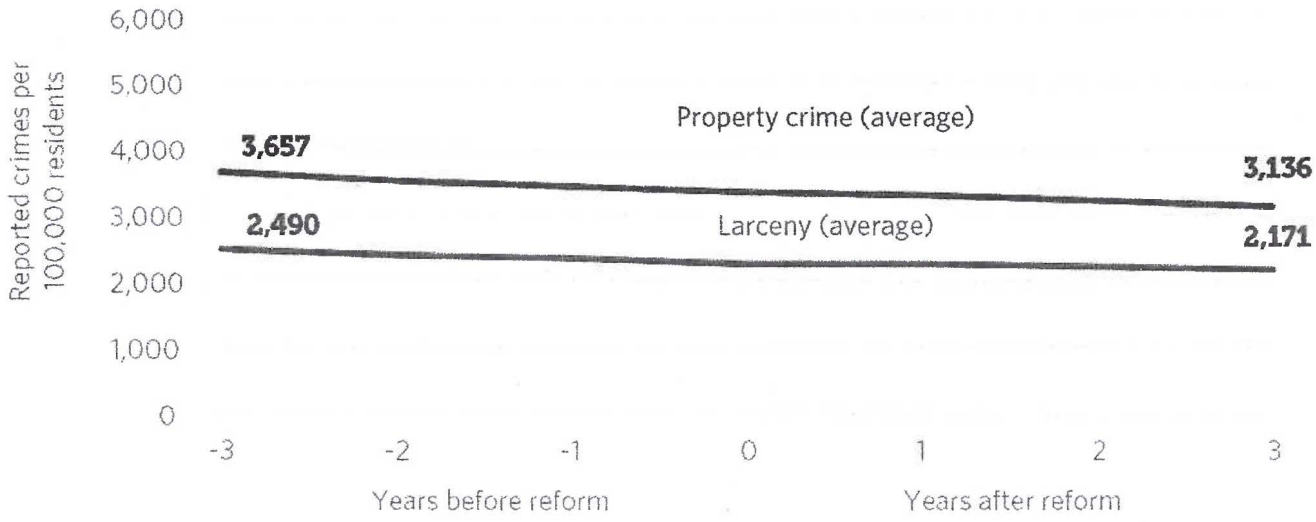
Changes in state felony theft thresholds have not interrupted the long nationwide decline in property crime and larceny rates that began in the early 1990s. The U.S. property crime rate fell 36 percent from 1998—three years before Oklahoma enacted the first of the state threshold hikes included in this analysis—to 2014, the most recent year for which data are available.[5] The U.S. larceny rate fell 33 percent during that span.[6]

Experts attribute the nation's sustained drop in violent and property crime rates to a host of factors, including better policing; the increased incarceration of certain repeat offenders; an expansion in private security personnel; an aging population that is less prone to criminal behavior; and technological advances, such as the widespread use of surveillance cameras, car- and home-alarm systems, and digital transactions that have reduced the need for cash.[7]

Figure 3

Increases in Felony Theft Thresholds Had No Effect on Property Crime, Larceny Rates

Crime decline continued in states that raised monetary limits between 2001 and 2011



Notes: Pew used a panel fixed-effects approach to determine whether increases in state felony theft thresholds had an effect on property crime and larceny rates. The analysis found no statistically significant relationship using the standard threshold of 0.05. See the methodological notes for more information about this analysis.

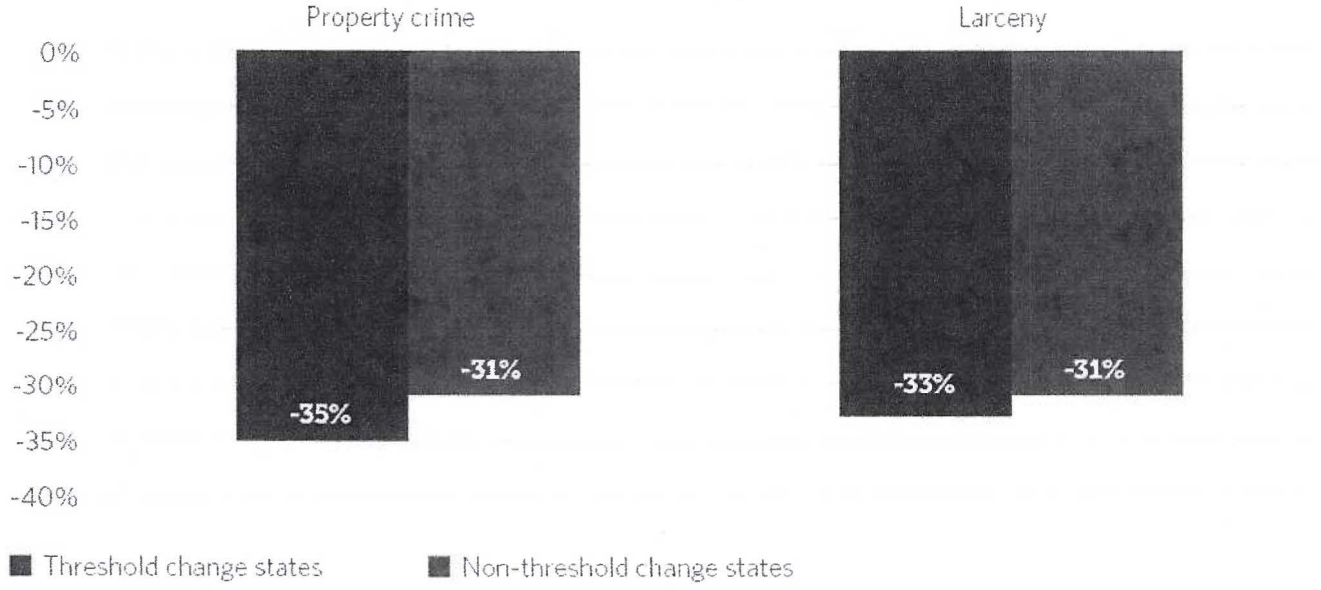
Source: Pew's analysis of data from the Federal Bureau of Investigation, *Crime in the United States* series, 1998-2014.

Because property crime and larceny rates have been on a downward trajectory nationwide, it is important to evaluate whether the same trend can be observed in states that have raised their felony theft thresholds. Average property crime and larceny rates continued to fall in the states that raised their thresholds between 2001 and 2011.

Figure 4

States That Raised Felony Theft Thresholds Between 2001 and 2011 Had Crime Declines Similar to Those That Did Not

All states reported sharp decreases in property crime, larceny rates



Notes: Pew evaluated data from 1998 to 2014 to allow for a sufficient before-and-after analysis of all state threshold changes between 2001 and 2011. Pew used a panel random-effects approach to measure changes in property crime and larceny rates and compare states that raised their felony theft thresholds with those that did not. The analysis found no statistically significant relationship between the two groups of states using the standard threshold of 0.05. See the methodological notes for more information about this analysis.

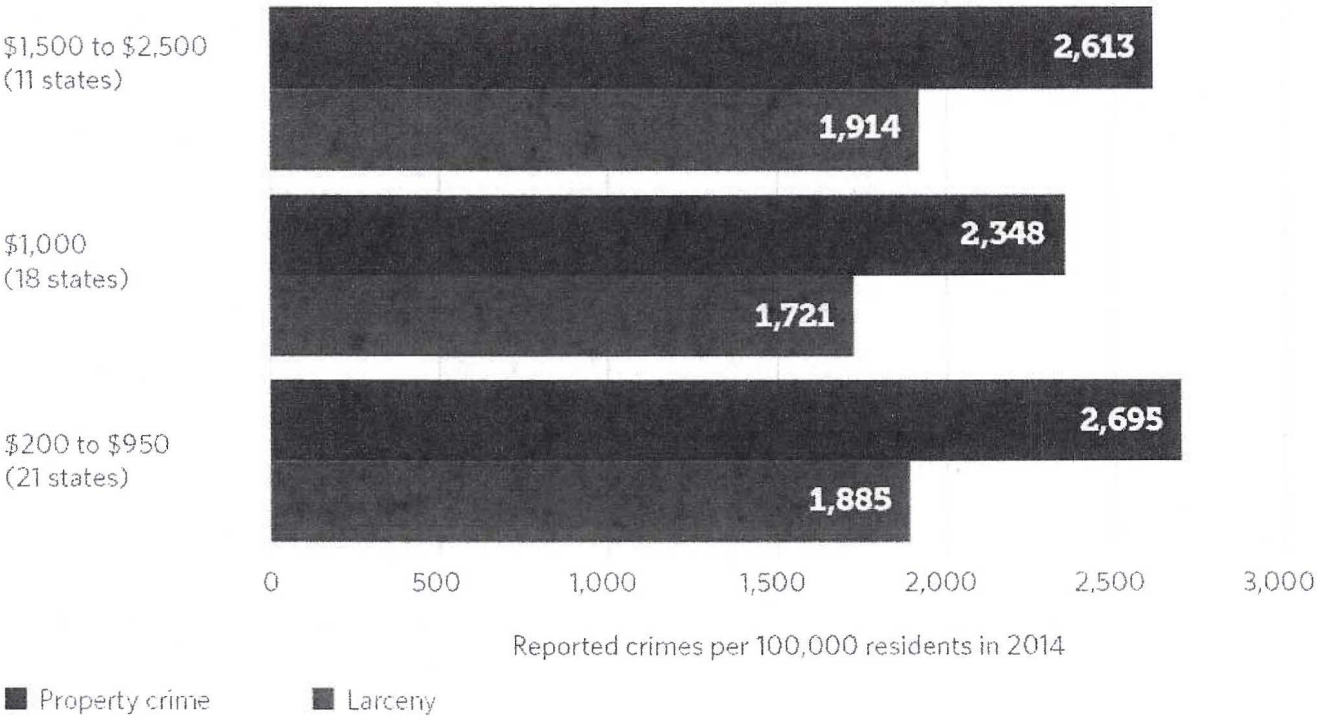
Source: Pew's analysis of data from the Federal Bureau of Investigation, *Crime in the United States* series, 1998-2014

When comparing the 23 states that raised their felony theft thresholds between 2001 and 2011 with the 27 that did not, property crime and larceny rates fell slightly more in the former group, although the difference was not statistically significant.

Figure 5

Felony Theft Values Are Unrelated to Property Crime and Larceny Rates

States report similar crime rates regardless of thresholds



Notes: Pew conducted a linear correlation test to determine whether property crime and larceny rates in 2014 were higher in states with higher felony theft thresholds. The analysis included no control variables and found no statistically significant correlation using the standard threshold of 0.05.

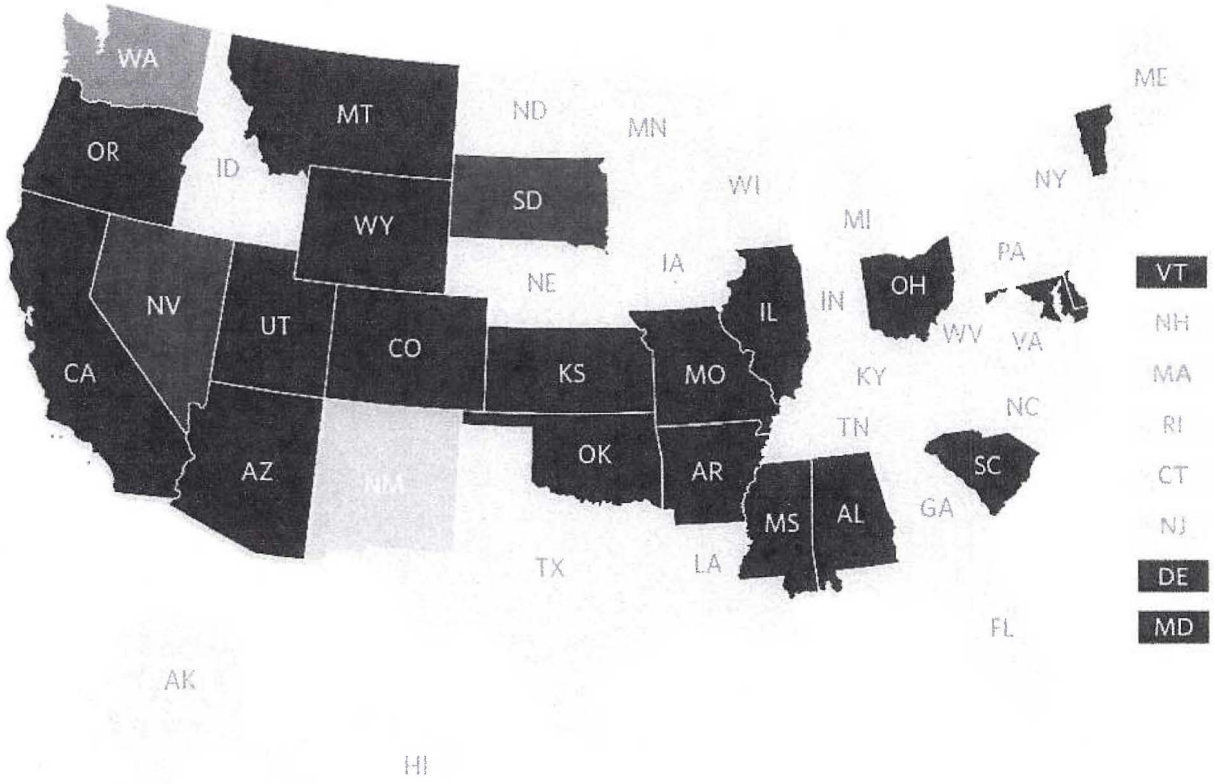
Source: Pew's analysis of data from the Federal Bureau of Investigation, *Crime in the United States, 2014*

The value of states' felony theft thresholds—whether set at $500, $1,000, or $2,000—is not correlated with property crime and larceny rates. Florida, for example, treats theft as a felony if the value of stolen money or goods exceeds $300, but its property crime and larceny rates are considerably higher than those in Pennsylvania, where the threshold is $2,000.

Map 1

Property Crime and Larceny Rates Fell in 19 of 23 States That Raised Their Felony Thresholds Between 2001 and 2011

Four states had increases in one or both rates



No threshold change ■ Decreases in property crime and larceny rates (19 states)

■ Increases in property crime and larceny rates (NV, SD) ■ Increase in property crime rate, decrease in larceny rate (WA)

■ Decrease in property crime rate, increase in larceny rate (NM)

Source: Federal Bureau of Investigation, *Crime in the United States* series, 1999–2014

An examination of long-term trends in property crime and larceny rates shows year-over-year fluctuations within many of the 23 states that raised their felony theft thresholds between 2001 and 2011. Nevertheless, for all but four of the 23 states—Nevada, New Mexico, South Dakota, and Washington—property crime and larceny rates were lower in 2014 than in the year in which each state raised its threshold.[8]

Download the state graphics:

Alabama Maryland Oregon

Arizona	Mississippi	South Carolina
Arkansas	Missouri	South Dakota
California	Montana	Utah
Colorado	Nevada	Vermont
Delaware	New Mexico	Washington
Illinois	Ohio	Wyoming
Kansas	Oklahoma	

Methodological notes

The statistical models for Figures 3 and 4 isolated the impact of threshold changes on property crime and larceny rates in each state in the year after the policy change and controlled for annual demographic, employment, and income information. The strength of this strategy is that only variables that change over time within each state must be controlled. Demographic data are drawn from the U.S. Census Bureau, and unemployment and income data are derived from the U.S. Bureau of Labor Statistics. State property crime and larceny rates are published by the FBI and are per 100,000 residents. The natural log of property crime and larceny rates was used in the model to account for general declines in rates over time.

Endnotes

1. Pew analysis of legislative information from the National Conference of State Legislatures. The District of Columbia raised its felony theft threshold in 2010 but is not included in this analysis because its crime data are not directly comparable with state crime statistics.

2. Bureau of Labor Statistics, Consumer Price Index Inflation Calculator, http://data.bls.gov/cgi-bin/cpicalc.pl.

3. Property crime includes the offenses of burglary, larceny-theft, motor vehicle theft, and arson. Larceny-theft includes offenses such as shoplifting and bicycle theft but does not include offenses such as embezzlement, forgery, and fraud. Definitions are set nationally by the Federal Bureau of Investigation and are not affected by individual states' crime definitions or penalty levels.

4. Pew analysis of legislative information from the National Conference of State Legislatures.

5. Federal Bureau of Investigation, Uniform Crime Reporting data tool, http://www.ucrdata-tool.gov.

6. Ibid.

7. The Pew Charitable Trusts, "Weighing Imprisonment and Crime" (February 2015), http://www.pewtrusts.org/~/media/assets/2015/02/pspp_qa_experts_brief.pdf.

8. Property crime and larceny rates were higher in Nevada and South Dakota. The property crime rate was higher in Washington, and the larceny rate was higher in New Mexico.

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The Effects of Changing State Theft Penalties (PDF)

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