

## Revised Recommended changes

Based upon the forgoing, the following revisions to **NRS 207.010** are tendered (a ~~strikethrough~~ indicates language suggested for deletion; *italics* indicate additional language added):

### **NRS 207.010 Habitual criminals: Definition; punishment.**

1. Unless the person is prosecuted pursuant to NRS 207.012 or 207.014, a person convicted in this State of:

(a) ~~Any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who has previously been two times convicted, whether in this State or elsewhere, of any crime which under the laws of the situs of the crime or of this State would amount to a felony, or who has previously been three times convicted, whether in this State or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element,~~ is a habitual criminal and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years.

(b) Any felony, who has previously been three times convicted, whether in this State or elsewhere, of any crime which under the laws of the situs of the crime or of this State would amount to a felony, ~~or who has previously been five times convicted, whether in this State or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or the intent to defraud is an element,~~ is a habitual criminal and shall be punished for a category A felony by imprisonment in the state prison:

(1) ~~For life without the possibility of parole;~~

(2) (1) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or

(3) (2) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served.

2. It is within the discretion of the prosecuting attorney whether to include a count under this section in any information or file a notice of habitual criminality if an indictment is found. The trial judge may, at his discretion, dismiss a count under this section which is included in any indictment or information.

3. *If a previous felony conviction resulted in a term of probation which has been completed without revocation, said conviction shall not be counted toward determining habitual criminal eligibility pursuant to this section. Such a conviction may, however, be considered by the district court in determining whether or not to exercise the discretion granted to said court by subsection 2.*

4. *A person is not eligible for habitual criminal treatment pursuant to this section if a period of more than 10 years has elapsed since the date of release of the offender from incarceration for any felony conviction or the expiration of the*

*period of any parole, probation or sentence for any felony conviction whichever is the later date.*<sup>1</sup>

Leaving the revised version to therefore read:

**NRS 207.010 Habitual criminals: Definition; punishment.**

1. Unless the person is prosecuted pursuant to NRS 207.012 or 207.014, a person convicted in this State of:

(a) any felony, who has previously been two times convicted, whether in this State or elsewhere, of any crime which under the laws of the situs of the crime or of this State would amount to a felony is a habitual criminal and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years.

(b) Any felony, who has previously been three times convicted, whether in this State or elsewhere, of any crime which under the laws of the situs of the crime or of this State would amount to a felony is a habitual criminal and shall be punished for a category A felony by imprisonment in the state prison:

(1) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or

(2) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served.

2. It is within the discretion of the prosecuting attorney whether to include a count under this section in any information or file a notice of habitual criminality if an indictment is found. The trial judge may, at his discretion, dismiss a count under this section which is included in any indictment or information.
3. If a previous felony conviction resulted in a term of probation which has been completed without revocation said conviction shall not be counted toward determining habitual criminal eligibility pursuant to this section. Such a conviction may, however, be considered by the district court in determining whether or not exercise the discretion granted to the said court by subsection 2.
4. A person is not eligible for habitual criminal treatment pursuant to this section if a period of more than 10 years has elapsed since the date of release of the offender from incarceration for any felony conviction or the expiration of the period of any parole, probation or sentence for any felony conviction whichever is the later date.

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<sup>1</sup> The language suggested here is taken from NRS 50.095(2).

## Current Petty Larceny Statute

### **NRS 205.240 Petit larceny; penalty.**

1. Except as otherwise provided in NRS 205.220, 205.226, 205.228 and 475.105, a person commits petit larceny if the person:

(a) Intentionally steals, takes and carries away, leads away or drives away:

(1) Personal goods or property, with a value of less than \$250, owned by another person;

(2) Bedding, furniture or other property, with a value of less than \$250, which the person, as a lodger, is to use in or with his lodging and which is owned by another person; or

(3) Real property, with a value of less than \$250, that the person has converted into personal property by severing it from real property owned by another person.

(b) Intentionally steals, takes and carries away, leads away, drives away or entices away one or more domesticated animals or domesticated birds, with an aggregate value of less than \$250, owned by another person.

2. A person who commits petit larceny is guilty of a misdemeanor. In addition to any other penalty, the court shall order the person to pay restitution.

[1911 C&P § 374; A 1947, 85; 1949, 127; 1943 NCL § 10324]—(NRS A 1965, 300, 1007; 1967, 500; 1969, 531; 1983, 547; 1985, 751; 1989, 1434; 1995, 13; 1997, 342, 1114; 1999, 3109)

### **Proposed Revision if habitual is amended (language mirrors DUI provisions):**

### **NRS 205.240 Petit larceny; penalty.**

1. Except as otherwise provided in NRS 205.220, 205.226, 205.228 and 475.105, a person commits petit larceny if the person:

(a) Intentionally steals, takes and carries away, leads away or drives away:

(1) Personal goods or property, with a value of less than \$250, owned by another person;

(2) Bedding, furniture or other property, with a value of less than \$250, which the person, as a lodger, is to use in or with his lodging and which is owned by another person; or

(3) Real property, with a value of less than \$250, that the person has converted into personal property by severing it from real property owned by another person.

(b) Intentionally steals, takes and carries away, leads away, drives away or entices away one or more domesticated animals or domesticated birds, with an aggregate value of less than \$250, owned by another person.

2. A person who commits petty larceny is guilty of:

(a) *For the first offense within 7 years, a misdemeanor.*

(b) *For a second offense within 7 years, of a misdemeanor. The court shall:*

(1) *Sentence him to:*

(I) *Imprisonment for not less than 10 days nor more than 6 months in jail; or*

(II) *Residential confinement for not less than 10 days nor more than 6 months, in the manner provided in NRS 4.376 to 4.3766, inclusive, or 5.0755 to 5.078, inclusive;*

(2) *Order him to attend "petty larceny school" or a similar program designed to reduce theft related recidivism.*

(c) *For a third offense within 7 years, of a category D felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years, and a fine of not more than \$5,000 unless as a result of defendant's current conviction he has been adjudicated as a habitual criminal pursuant to NRS 207.010, 207.012 or 207.01, in which case he shall be sentenced as a habitual criminal in accordance with the provisions of said statutes.*

3. *In addition to any other penalty, the court shall order the person to pay restitution.*

4. *Except as otherwise provided in this subsection, an offense that occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard to the sequence of the offenses and convictions. The facts concerning a prior offense must be alleged in the complaint, indictment or information must not be read to the jury or proved at trial but must be proved at the time of sentencing and, if the principal offense is alleged to be a felony, must also be shown at the preliminary examination or presented to the grand jury.*