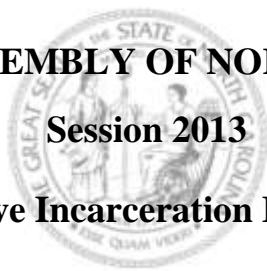


**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2013**

**Legislative Incarceration Fiscal Note**

**(G.S. 120-36.7)**

**BILL NUMBER:** Senate Bill 636 (Second Edition)

**SHORT TITLE:** Wildlife Resources Comm. Penalty Changes.

**SPONSOR(S):** Senator Newton

<b>FISCAL IMPACT</b>					
(\$ in millions)					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures:					
<b>NET STATE IMPACT</b>	<b>Likely budget cost. See Assumptions &amp; Methodology section for additional details.</b>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>					
Administrative Office of the Courts, Indigent Defense Services, Department of Public Safety					
<b>EFFECTIVE DATE:</b> December 1, 2013 and applies to offenses committed on or after that date					
<b>TECHNICAL CONSIDERATIONS:</b>					
None					

This bill will have a minimal fiscal impact and will likely result in savings to Indigent Defense Services and the Department of Public Safety.

**FISCAL IMPACT SUMMARY:**

The proposed bill may have a fiscal impact to address new chargeable offenses being enforced, adjudicated and having penalties applied to those convicted of the offenses. However, given there is no historical data on these new offenses, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of these crimes:

- Administrative Office of the Courts: No additional cost – cost of \$165 per disposition
- Indigent Defense Services: Savings of \$166 to a cost of \$0 in district court  
Savings of \$321 to a cost of \$0 in superior court without a trial  
Savings of \$847 to a cost of \$0 in superior court with a trial
- Prison Section: No estimated impact

- Community Corrections: Savings of \$1,307 to cost of \$1,960

In addition, this bill would generate an additional \$57,100 for the Civil Penalty and Forfeiture Fund annually.

Please see the Assumptions and Methodology section for more information.

#### **BILL SUMMARY:**

Sections 2 through 7 of this bill make numerous changes to existing penalties for violating specific wildlife laws and create some new offenses.

This section amends G.S. 75A-6.1, Navigation rules, reduce the penalty for violation of G.S. 75A-6.1(a). G.S. 75A-6.1(a) provides that every vessel operated on the waters of this State that is required to obtain an identification number pursuant to this Chapter, has a valid marine document issued by the federal Bureau of Customs or any federal agency successor to it, or issued pursuant to a federally approved numbering system of another state shall comply with the navigation rules, including requirements for navigational lights, sound-signaling devices, and other equipment, contained in the Inland Navigational Rules Act of 1980. Currently, any violation of the navigation rules is a Class 3 misdemeanor punishable only by a fine. Amended G.S. 75A-6.1(c) provides that violation of G.S. 75A-6.1(a) shall be an infraction, the penalty for which shall be a fine of not more \$100.

Section 3 amends existing G.S. 75A-10, Operating vessel or manipulating water skis etc.; in reckless manner; operating, etc.; while intoxicated, etc.: depositing or discharging litter, etc. by changing the penalty for subsection (b1) – no person shall operate any vessel while underway on the waters of this State while under the influence of any impairing substance, or after having consumed sufficient alcohol that the person has, at any relevant time after the boating, an alcohol concentration of .08 or more – from just a Class 2 misdemeanor offense to a Class 2 misdemeanor offense plus a fine of not less than \$250.

Section 4 amends subsection (d) of G.S. 75A-13.1, Skin and scuba divers, and reduces the penalty for violation of the statute. Currently, G.S. 75A-13.1(d) provides that any violation of G.S. 75A-13.1, governing skin and scuba diving flags and safety in waters of this State open to boating, shall be a Class 3 misdemeanor punishable only by a fine not to exceed \$25. This section of the bill would amend G.S. 75-13.1(d) to provide that violation of a provision of G.S. 75-13.1 is an infraction, the penalty for which shall be a fine of not more than \$100.

Section 6 of this bill amends subsection (c3) of G.S. 75A-13.3, Personal Watercraft, to reduce the penalty for violation of the statute. Existing G.S. 75A-13.3(c3) provides that a vessel livery who fails to provide the operator of a leased personal watercraft with basic safety instruction prior to allowing the operation of the leased personal watercraft is guilty of a Class 3 misdemeanor. The proposed amendment would make the vessel livery that fails to provide basic safety instruction responsible for an infraction, the penalty for which shall be a fine of not more than \$100.

Section 7 amends existing G.S. 75A-16.2, Boating safety education required, by changing subsection (b)(11) to require that the person was born before January 1, 1988 (was that he or she was at least 26 years of age). Subsection (c) states that a person who violates a provision of this section or a rule adopted pursuant to this section is guilty of an infraction. The court shall assess court costs for each violation but shall not assess a penalty. This bill amends subsection (c) to require a \$50 fine.

Section 8 amends subsection (f) of G.S. 75A-17, Enforcement of Chapter, to make the existing Class 3 misdemeanor an infraction. Currently, G.S. 75A-17(f) provides that it shall be a Class 3 misdemeanor for a

vessel operator to fail to slow to a no-wake speed when passing within 100 feet of a law enforcement vessel displaying flashing blue light unless the vessel is in a narrow channel, when the vessel shall slow to a no-wake speed when passing within 50 feet of said law enforcement vessel. The proposed amendment would provide that a violation of this subsection shall be an infraction as provided in G.S. 14-3.1.

Section 9 reduces the penalty for most of the violations in Article 1, the Boating Safety Act, of Chapter 75A of the General Statutes via an amendment to G.S. 75A-18, Penalties. Currently, G.S. 75A-18(a) states that a person who violates a provision of Article 1 of Chapter 75A or a rule adopted under the authority of Chapter 75A shall be guilty of a Class 3 misdemeanor and shall only be subject to a fine not to exceed \$250 for each violation. The proposed amendment changes the misdemeanor to an infraction.

According to the Wildlife Resources Commission, the offenses in Article 1 of Chapter 75A, not otherwise specifically made an infraction by this bill, for which a violation of would be made an infraction by this section include:

- G.S. 75A-4, Identification numbers required.
- G.S. 75A-5, Application for certificate of number and fees; reciprocity; change of ownership; conformity with federal regulations; records; award of certificates; renewal of certificates; transfer of partial interest; destroyed or junked vessels; abandonment; change of address; duplicate certificates; display.
- G.S. 75A-6(n), Operating a vessel with 10 horse power or less without at least one personal flotation device or without white light to display from sunset to sunrise.
- G.S. 75A-13.3, Personal watercraft
  - G.S. 75A-13.3(a1), Operate personal watercraft at a greater than NO Wake speed within 100 feet of anchored or moored vessel, dock, pier, swim float, etc.
  - G.S. 75A-13.3(d)(1)&(2), Operate personal watercraft while any person riding or being towed not wearing a personal flotation device or operator not secured to lanyard cut off switch
  - G.S. 75A-13.3(d1)(1)&(2), Operate personal watercraft while towing a person and total persons exceed the carrying capacity; or operate a personal watercraft while towing another person and no review mirror or observer.
- G.S. 75A-16.2, Boating safety education required.

According to the Wildlife Resources Commission, the rules for which a violation would be made an infraction by this bill include:

- 15A NCAOC 10F .0106(a), Numbers not displayed properly, illegible, etc.
- 15A NCAOC 10F .0201(b), Requirements for personal flotation devices
- 15A NCAOC 10F .0301-.0376, Operate a vessel at greater than no-wake speed in a designated and marked no wake zone
- 15A NCAOC 10F .0201(c), Operate vessel which was not equipped with fire extinguishers
- 15A NCAOC 10F .0201(f), Operate vessel which was not equipped with sound devices

Section 10 of this bill creates two new misdemeanor offenses in Chapter 113, Conservation and Development, of the General Statutes, by amending G.S. 113-294, Specific violations. The bill creates a new subsection (c3) which provides that it shall be a Class 1 misdemeanor, punishable by a fine of not less than \$2,500 in addition to such other punishment prescribed for the offense, for any person to unlawfully take, possess, or transport any elk from State-owned land. The bill also creates a Class 2 misdemeanor with the addition of subsection (d1) to G.S. 113-294, which states that any person who unlawfully, without written permission of the landowner, lessee, or agent of the landowner or lessee, takes, possesses, or transports any deer from land that has been posted in accordance with G.S. 14-159.7.

This bill has an effective date of December 1, 2013, and applies to offenses committed on or after that date.

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

### **Judicial Branch**

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 2 of this bill amends existing G.S. 75A-6.1(c) by changing the offense to an infraction. In FY 2011-12, 663 defendants were charged with the existing Class 3 misdemeanor. Generally, both infractions and misdemeanors cost the courts an average of \$31, so there would be no additional savings to the courts due to this section.

Section 3 of this bill amends existing G.S. 75A-10, to state that a person who violates subsection (b1) is guilty of a Class 2 misdemeanor, punishable by a fine of not less than \$250. In FY 2011-12, 257 defendants were charged with operating a vessel or manipulating water skis in a reckless manner or depositing or discharging litter. The addition of a fine of not less than \$250 may result in a more rigorous defense and fewer pleas in these types of cases. Since trials are a more costly and time intensive manner of disposition than pleas, any increase in the number of trials will impact the workload of the court system. The number of additional trials and corresponding costs cannot be estimated.

Section 4 amends existing G.S. 75A-13.1(d) to state that violations shall constitute an infraction, the penalty for which shall be a fine of no more than \$100 (was a Class 3 misdemeanor punishable only by a fine not to exceed \$25). AOC does not currently have a specific offense code for the violations of G.S. 75A-13.1. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Generally, both infractions and misdemeanors cost the courts an average of \$31, so there would be no additional savings to the courts due to this section.

Section 6 amends existing G.S. 75A-13.3(c3) to state that violations shall constitute an infraction (was a Class 3 misdemeanor. In FY 2011-12, 105 defendants were charged with a violation of the existing Class 3 misdemeanor. Of those, seven were convicted. Generally, both infractions and misdemeanors cost the courts an average of \$31, so there would be no additional savings to the courts due to this section.

Section 7 of this bill amends existing G.S.75A-16.2. AOC data shows that 47 individuals were cited for this infraction in FY 2011-12. Court costs for infractions are currently \$173; by only requiring the payment of a \$50 fine instead of court costs there may be fewer instances of respondents contesting the citation and possibly fewer dismissals. The workload requirements for court staff to process these cases will remain essentially the same. By removing the requirement to pay court costs, there will be some decline in General Fund revenue, as well as to the other funds that receive a portion of these costs (detail in table below).

<b>New District Court Criminal Filings</b>		
Fee:	Revenue to:	Amount per case:
General Court of Justice	General Fund	127.05
	State Bar*	2.45
Phone	Court System	4.00
Facilities	Local Government*	12.00
Misdemeanant Confinement Fund Fee	Misdemeanant Confinement Fund	18.00
LEO Retirement/Insurance	Treasurer	7.50
LEO Training and Certification Fee	Department of Justice	2.00
Collection Assistance Fee	General Fund*	*
<b>TOTAL TO GENERAL FUND</b>		<b>\$173.00</b>

\*Ten percent (10%) of the State Bar and Facilities fee is remitted to the General Fund as a collection assistance fee.

Court costs may also include a \$10.00 Chapter 20 Fee for conviction of any Chapter 20 offense; a \$2.00 DNA fee for criminal offenses only (does not apply to infractions); or a \$5.00 service fee for each arrest or service of criminal process, including citations and subpoenas.

Section 8 amends existing G.S. 75A-17(f) to state that violations of this statute shall constitute an infraction (was a Class 3 misdemeanor). AOC does not currently have a specific offense code for the violations of G.S. 75A-13.1. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Generally, both infractions and misdemeanors cost the courts an average of \$31, so there would be no additional savings to the courts due to this section.

Section 9 amends existing G.S. 75A-18, so that only violations of the provisions of this Article are infractions unless a more severe penalty is prescribed for a specific offense. AOC does not have offense codes for all of these violations, which may be some indication that certain offenses are infrequently charged. Generally, both infractions and misdemeanors cost the courts an average of \$31, so there would be no additional savings to the courts due to this section.

Section 10 amends G.S. 113-294 by adding a fine or increasing the allowable fine for certain offenses listed in subsections (a), (b), (d), (e), (m), (r), and (s). Subsection (d) is a Class 3 misdemeanor offense; the others are Class 2 misdemeanors. The addition of a fine or the increase of an existing fine may result in a more rigorous defense and fewer pleas in these types of cases. Since trials are a more costly and time intensive manner of disposition than pleas, any increase in the number of trials will impact the workload of the court system. The number of additional trials and corresponding costs cannot be estimated.

New subsection (c)(3) creates the offense of unlawfully taking, possessing, or transporting an elk from State-owned land, which shall be a Class 1 misdemeanor punishable by a fine of not less than \$2,500. New

subsection (d1) creates the offense of unlawfully taking, possessing or transporting any deer from land that has been posted in accordance with the provisions of G.S. 14-159.7 without written permission of the landowner or lessee. This is a Class 2 misdemeanor punishable by a fine of not less than \$500.

Since these are new charges, it is not known how many individuals will be charged. For every additional person charged with a Class 1 misdemeanor, AOC estimates the average cost to the court would be \$165. For every additional person charged with a Class 2 misdemeanor, AOC estimates the average cost to the court would be \$88.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS’s private assigned counsel costs do not distinguish between classes of misdemeanors, so IDS is unable to quantify the impact on PAC costs from the second two changes in the chart below. Reclassifying an existing misdemeanor as an infraction would generate savings for IDS because there is no right to appointed counsel for an infraction. The following chart represents the changes in IDS’ per case costs for each indigent case disposed in district court.

General Statute	Current Class	Proposed Class	Per Case Cost Change for PAC
75A-6.1(c)	Class 3 MD	Infraction	(\$166)
75A-13.1(d)	Class 3 MD	Infraction	(\$166)
75A-13.1(c3)	Class 3 MD	Infraction	(\$166)
75A-18(f)	Class 3 MD	Infraction	(\$166)
113-294(c3)	Class 2 MD	Class 1 MD	Not quantifiable
113-294(d1)	Class 3 MD	Class 2 MD	Not quantifiable

The following chart represents the changes in IDS’ per case costs for each indigent case disposed in superior court.

General Statute	Current Class	Proposed Class	Per Case Cost Change for PAC
75A-6.1(c)	Class 3 MD	Infraction	(\$321) non-trial (\$847) trial
75A-13.1(d)	Class 3 MD	Infraction	(\$321) non-trial (\$847) trial
75A-13.1(c3)	Class 3 MD	Infraction	(\$321) non-trial (\$847) trial
75A-18(a)	Class 3 MD	Infraction	(\$321) non-trial (\$847) trial
113-294(c3)	Class 2 MD	Class 1 MD	Not quantifiable
113-294(d1)	Class 3 MD	Class 2 MD	Not quantifiable

### **Civil Penalty and Forfeiture Fund**

The Civil Penalty and Forfeiture Fund (CPFF) is a significant source of revenue for North Carolina’s public schools. Fines and forfeitures are the proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by State agencies. This bill would increase the fines for several misdemeanors and infractions, which would go directly to the CPFF.

G.S. 113-294, Specific violations, contains 19 misdemeanor offenses (subsections (a) through (s)). Four of the offenses have AOC Offense Codes. There are no offense codes for G.S. 75A-6.1, G.S. 75A-18, or G.S. 113-294(b) indicating that these may be infrequently charged. In addition, there also may be convictions that are not being counted. The Sentencing Commission, which provided this data, counts convictions where this offense is the most serious offense; in other words, if a person has a conviction for one of these misdemeanors and for a felony, they will show up as a conviction for the felony and not for the misdemeanor. The following chart shows the revenue generated for the Civil Penalty and Forfeiture Fund due to changes in this bill.

Current Statute	Offense	Current Fine	Proposed Fine	Number of Convictions in FY 2011-12	Total to Civil Penalty and Forfeiture Fund
G.S. 14-3.1	Boating safety education	\$0	\$50	47	\$2,350
G.S. 75A-10	Operating a vessel while impaired	\$0	\$250	105	\$26,250
G.S. 75A-13.3(c3)	Failing to provide operator of a leased watercraft with safety instructions	\$0	\$100	7	\$700
G.S. 113-294(a)	Selling/buying wildlife	\$0	\$250	1	\$250
G.S. 113-294(d)	Possessed deer taken closed season	\$100	\$250	18	\$2,700
G.S. 113-294(e)	Spotlight deer/night deer hunt	\$250	\$500	77	\$19,250
G.S. 113-295(m)	Unlawfully take migratory bird	\$100	\$250	42	\$6,300
				<b>Total:</b>	<b>\$57,800</b>

**Department of Public Safety –Prison Section**

This bill decreases the penalty for some misdemeanors and creates two new Class 2 misdemeanors. The North Carolina Sentencing and Policy Advisory Commission expect no impact on the prison population since offenders who receive active sentences will serve them in a local jail. The Department of Public Safety does not anticipate an impact on prison custody projections. It is also not known how many offenders might be convicted and sentenced to supervision in the community under the proposed bill.

**Department of Public Safety – Community Correction Section**

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.<sup>1</sup> General supervision of intermediate and community offenders by a probation officer costs \$3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Section 2 of this bill reduces the penalty for violation of G.S. 75A-6.1(a). Convictions for G.S. 75A-6.1(a) are punishable by a fine only; therefore, the decrease in penalty would have little or no impact on community corrections or the local jail populations.

<sup>1</sup> CCS incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

Sections 4, 6, 7, 8, and 9 of this bill reduce the penalty for several Class 3 misdemeanors. These proposed changes would result in probation resource savings since infractions are punishable by a fine. The average savings to community corrections for any individual who would have been convicted of a Class 3 misdemeanor and received community supervision is \$1,307 (360 days times \$3.63 per day).

Section 10 of this bill creates a Class 1 misdemeanor and a Class 2 misdemeanor with the additions of subsections (c) and (d1) respectively to G.S. 113-294. Since the proposed section creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on community corrections. In FY 2011-12, 26% of offenders convicted of a Class 1 misdemeanor were sentenced to active sentences for an average length of 39 days; 2% received intermediate sentences; and 72% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanant sentenced to an active sentence. The average length of intermediate and community punishment imposed for this offense class was 18 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives an intermediate sentence is \$1,960 (540 days times \$3.63 per day). Of those convicted to a community sentence, around 40% received supervised sentences. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is \$1,634 (450 days times \$3.63 per day).

In FY 2011-12, 29% of offenders convicted of a Class 2 misdemeanor were sentenced to active sentences for an average length of 39 days; 1% received intermediate sentences; and 70% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanant sentenced to an active sentence. The average length of intermediate and community punishment imposed for this offense class was 16 and 13 months, respectively. The average cost to community corrections for any individual convicted of a Class 2 misdemeanor who receives an intermediate sentence is \$1,742 (480 days times \$3.63 per day). The average cost to community corrections for any individual convicted of a Class 2 misdemeanor who receives community supervision is \$1,416 (390 days times \$3.63 per day).

**SOURCES OF DATA:** Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

**TECHNICAL CONSIDERATIONS:** None



**FISCAL RESEARCH DIVISION: (919) 733-4910**

**PREPARED BY:**

Maggie Morrissey

Kristine Leggett

**APPROVED BY:**

Mark Trogdon, Director  
**Fiscal Research Division**

**DATE:** May 14, 2013



**Signed Copy Located in the NCGA Principal Clerk's Offices**