

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**SB 246**

January 26, 2021

**SUMMARY OF BILL:** Mirrors confinement penalties for boating under the influence (BUI) with the penalties for driving under the influence (DUI). Removes fines as a penalty for a BUI offense.

**ESTIMATED FISCAL IMPACT:**

**Decrease State Revenue –**

**\$6,600/FY21-22 and Subsequent Years/Wildlife Resource Fund**

**Decrease Local Revenue –**

**\$8,000/FY21-22 and Subsequent Years**

**Increase Local Expenditure –**

**\$41,700/FY21-22 and Subsequent Years\***

Assumptions:

- Pursuant to Tenn. Code Ann. § 69-9-219, a first offense BUI shall be fined not less than \$250 nor more than \$2,500, and in the discretion of the court, the person may be confined in the county jail or workhouse for a period not to exceed 11 months and 29 days. For conviction of the second offense, there shall be imposed a fine of not less than five \$500 nor more than \$2,500, and in the discretion of the court, the person may be confined in the county jail or workhouse for a period not to exceed 11 months and 29 days. For the third or subsequent conviction, there shall be imposed a fine of not less than \$1,000 nor more than \$5,000 and the person shall be confined in the county jail or workhouse for not less than 30 days nor more than 11 months and 29 days.
- It is assumed that, currently, all first and second offense BUIs are punished by the minimum fine without confinement. Further, it is assumed that third and subsequent offense BUIs are punished by the minimum fine and 30 days confinement.
- Below is an analysis of BUI penalties, per the language of this legislation:

Offense	Confinement	Category
First (BAC between 0.08 and 0.19)	48 hours up to 11 months, 29 days	Class A misdemeanor
First (BAC .020 or greater)	Minimum 7 consecutive days	Class A misdemeanor
Second	45 days to 11 months, 29 days in jail	Class A misdemeanor

Third	120 days to 11 months, 29 days in jail	Class A misdemeanor
Fourth	365 days of jail time with a minimum of 150 consecutive days served	Class E felony
Fifth	365 days of jail time with a minimum of 150 consecutive days served	Class D felony
Sixth and Subsequent	365 days of jail time with a minimum of 150 consecutive days served	Class C felony

- According to the Tennessee Wildlife Resources Agency's (TWRA) latest *Tennessee Boating Incident Statistical Report*, there were 62 BUI arrests in 2019. This figure is assumed to remain relatively consistent.
- Given the relatively low annual figure, it can be reasonably estimated that of the 62 BUIs each fiscal year, there will be an average of 50 first time offenses with a BAC between 0.08 and 0.19, 3 first time offenses with a BAC 0.20 or greater, 8 second time offenses, and 1 third time offense.
- This analysis assumes the minimum confinement time per offense.
- The average cost to local governments to house an inmate in a local jail facility is \$73 per day.
- First time offenses with a BAC between 0.08 and 0.19 will result in a recurring mandatory local expenditure of \$7,300 [(50 offenses x 2 days confinement) x \$73].
- First time offenses with a BAC 0.20 or greater will result in a recurring increase in mandatory local expenditures of \$1,533 [(3 offenses x 7 days confinement) x \$73].
- Second BUI offenses will result in a recurring increase in mandatory local expenditures of \$26,280 [(8 offenses x 45 days confinement) x \$73].
- Third offenses will result in a recurring increase in mandatory local expenditures of \$6,570 {[1 offense x (120 days confinement – 30 days confinement)] x \$73}.
- The total recurring increase in mandatory local expenditures in FY21-22 and subsequent years will be \$41,683 (\$7,300 + \$1,533 + \$26,280 + \$6,570).
- The penalties for a BUI, per the language of this legislation, will no longer include fines levied.
- There is an annual \$18,250 [(53 first offense convictions x \$250 fine) + (8 second offense convictions x \$500) + (1 third offense convictions x \$1,000)] levied in fine revenue under current law.
- Twenty percent of fines are assumed to go unpaid due to indigence, resulting in a total of \$14,600 (\$18,250 x 80%) in fines collected each year.
- Pursuant to Tenn. Code Ann. § 70-6-106, the courts are required to make a detailed report of all fines and forfeitures collected during the previous calendar year on forms provided by the TWRA. The courts shall retain 10 percent of fines or forfeitures collected, and shall pay one half of the balance, or 45 percent, to the State Treasurer with the report, to be placed to the credit of the Wildlife Resources Fund, and shall pay one half of the balance, or 45 percent, to the trustee of the county in which the fine or forfeiture was collected, to be placed to the credit of the general funds of the county.
- This legislation will result in a recurring decrease in state revenue to the TWRA's Wildlife Resource Fund \$6,570 (\$14,600 x 45%) in FY21-22 and subsequent years.

- There will be a mandatory decrease in local revenue in FY21-22 and subsequent years of \$8,030 [(\$14,600 x 45%) + (\$14,600 x 10%)].

*\*Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Bojan Savic". The signature is written in a cursive, slightly slanted style.

Bojan Savic, Interim Executive Director

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