

A Fine Sentence for Class 3 Misdemeanors

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I thought I'd take a few minutes and jot down some questions and answers about the new fine-only punishment scheme for Class 3 misdemeanors for many defendants (enacted as part of the 2013 Appropriations Act). Several hours later—after thinking about the different permutations, reading several cases, talking with patient colleagues, and pondering further—I came up with [a list of 33 questions and answers on Appointment of Counsel for Class 3 Misdemeanors](#). The subject poses both constitutional and practical questions.

Beginning with offenses committed on or after December 1, 2013, the basic rule is that a court may not impose a punishment other than a fine for a Class 3 misdemeanor if the defendant has three or fewer convictions and no other statute authorizes a greater punishment. See G.S. 15A-1340.23(d). The impact of this rule is that defendants who cannot receive more than a fine are generally not entitled to appointed counsel because, under the Sixth Amendment, the right to counsel in misdemeanor cases applies only if the defendant receives a sentence of active or suspended imprisonment.

This aspect of Sixth Amendment jurisprudence has always been awkward to apply because it requires that courts work backward from the sentence to be imposed at the end of the case in determining the defendant's entitlement to counsel at the outset of the case. (For felonies, an indigent defendant always has a right to appointed counsel.) The new punishment scheme for Class 3 misdemeanors poses new questions, such as:

- What dispositions are permissible for “fine-only” Class 3 misdemeanors? Are costs permissible? A deferred prosecution? A sentence of time served?
- When does the court have to determine the defendant's prior record for purposes of appointing counsel?
- What of a defendant charged with a Class 3 misdemeanor who has been arrested and cannot make bond? Does he or she have a right to counsel although not subject to imprisonment if convicted?
- Do the collateral consequences of a conviction have a bearing on the analysis?

People undoubtedly will have more questions as well as different views about the impact of the change. As always, feel free to weigh in with your questions and comments.