

## DWI Parole: How Does It Really Work?

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A few months ago, I taught a session on DWI sentencing to a group of judges. As part of that session, I reviewed the rules for determining the parole-eligibility of a defendant convicted of impaired driving under [G.S. 20-138.1](#) and sentenced to an active term of imprisonment under [G.S. 20-179](#). The upshot of those rules, which Jamie Markham described in detail in [this post](#), replete with illustrative examples, is that a defendant sentenced to the maximum punishment for a Level One DWI—24 months imprisonment—becomes eligible for parole after serving 2.4 months imprisonment if he or she (1) receives a full award of good time credit, and (2) (i) has obtained a substance abuse assessment and has completed any recommended treatment or training program or (ii) is paroled into a residential program.

After patiently listening to me explain the rules for calculating parole-eligibility, several judges asked about their practical application. Specifically, they wanted to know how frequently defendants sentenced to active terms of imprisonment were paroled and how soon that occurred after the defendant became parole eligible. In other words, were the defendants they sentenced to two-years' imprisonment routinely released after serving fewer than three months?

The short answer is no. According to [this](#) 2009-2010 report by the North Carolina Department of Correction, the 3,188 non-structured sentencing misdemeanants released from prison during that period served an average of 6.5 months and 48 percent of the sentence imposed “due to good time, gain time and parole eligibility rules.” (North Carolina Department of Correction, 2009-2010 Annual Statistical Report at 26.) DOC reported that the majority of these prisoners were serving time for DWI convictions. If the numbers of convictions for non-structured sentencing act offenses are any indication, defendants sentenced under G.S. 20-179 were the *vast* majority. The only misdemeanor offenses other than offenses sentenced under G.S. 20-179 that are excluded from structured sentencing act provisions are failures to comply with public health control measures sentenced under G.S. 130A-25 and misdemeanors committed before October 1, 1994. See [G.S. 15A-1340.10](#). Far more defendants are convicted of impaired driving offenses sentenced under G.S. 20-179 than public health control violations each year. In 2010-2011, for example, more than 40,000 defendants were convicted of offenses sentenced under G.S. 20-179 and fewer than 50 of offenses sentenced under G.S. 130A-25. Given that [good time alone](#) can reduce a sentence of imprisonment under G.S. 20-179 by 50 percent, these statistics indicate that defendants infrequently are released on the earliest date at which they are parole-eligible. Moreover, because defendants sentenced for covered offenses must have either completed substance abuse treatment or training or be paroled into a residential treatment program, defendants who are paroled before their outright release date typically are paroled into [DART-Cherry's 90-day treatment program](#) (for men) or the Black Mountain Substance Abuse Treatment Center for Women. According to [another DOC report](#), in 2009-2010, parolees made up 38 percent of the participants in DART Cherry programs. The Black Mountain Substance Abuse Treatment Center for Women opened in May 2010, and I haven't yet come across any reports describing its population. In any event, this type of parole might not be the kind of “early release” contemplated by the public. After all, as Jamie notes [here](#), confinement at DART-Cherry has been deemed sufficiently restrictive of participants' liberty to count as confinement under [G.S. 15-196.1](#).

Readers, if you have statistical or even anecdotal evidence about parole for defendants convicted of impaired driving, please share it using the comment feature.