

Laura's Law

Author : Shea Denning

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In [yesterday's post](#), Jeff mentioned Laura's Law, which increases the maximum punishment for impaired driving. Today's post discusses those provisions in more detail.

[S.L. 2011-191](#), dubbed Laura's Law in recognition of 17-year-old [Laura Fortenberry](#), who died last summer when the car she was riding in was struck by an [impaired driver](#) who had previous DWI convictions, increases the maximum punishment for impaired driving, increases the length of time that continuous alcohol monitoring may be required as a condition of probation, and makes other changes applicable to defendants charged with and sentenced for DWI. The act is effective for offenses committed on or after December 1, 2011.

Currently, the most severe sentence that can be imposed for any of the impaired driving offenses sentenced pursuant to G.S. 20-179 is a Level 1 sentence, which carries a maximum term of imprisonment of 24 months and a maximum fine of \$4,000. A person convicted of impaired driving is sentenced at Level 1 if two or more grossly aggravating factors exist. (You can read more about grossly aggravating factors and the offenses sentenced pursuant to G.S. 20-179 [here](#).) S.L. 2011-191 requires that a judge impose Aggravated Level One punishment when there are at least three grossly aggravating factors in an impaired driving case sentenced under G.S. 20-179. (For ease of reference, I'll refer to this as a Level A1 DWI.) Level A1 DWI requires a minimum term of 12 months imprisonment up to a maximum term of 36 months. The maximum fine is \$10,000. A defendant sentenced for a Level A1 DWI is not eligible for [parole](#). Level A1 defendants must, however, be released from imprisonment four months before the end of the "maximum imposed term of imprisonment" and must be placed on post-release supervision with a requirement that they abstain from alcohol during this four-month period as verified by a continuous alcohol monitoring system. Continuous alcohol monitoring systems (CAM) employ ankle bracelets that test the wearer's sweat for signs of alcohol use. See Ames Alexander, *DWI tool is curbed in N.C.*, available [here](#) (describing technology and chronicling past controversy regarding use of CAM.); see also G.S. 15A-1343.3 (defining a "'continuous alcohol monitoring system' as a device that is worn by a person that can detect, monitor, record, and report the amount of alcohol within the wearer's system over a continuous 24-hour daily basis"). A defendant's post-release supervision may be revoked for consuming alcohol or failing to comply with continuous alcohol monitoring requirements.

Laura's Law does not except Level A1 DWIs from Department of Correction regulations regarding the awarding of sentence reduction credits for sentences imposed upon conviction of G.S. 20-138.1. See G.S. 148-13(b). Thus, Level A1 sentences appear to be subject to the day-for-day credit sentence reduction credits described in DOC's sentence credit policy, available [here](#), subject to the limitation set forth in G.S. 20-179(p)(2), which provides that good time credit may not reduce the mandatory minimum period of imprisonment.

An example may help to illustrate the application of these provisions to a Level A1 sentence. Suppose a defendant convicted of impaired driving is sentenced at Level A1 to a term of imprisonment of 18 months. The defendant is eligible for one day of credit for each day served in custody without an infraction, resulting in a possible 9 months of good time credit. However, pursuant to G.S. 20-179(p)(2), good time credit cannot reduce the sentence below the mandatory minimum period, which, in this case, is 12 months. It's possible that this defendant may, nevertheless, be released before the expiration of 12 months. Recall the post-release supervision provisions described earlier, which require that a Level A1 defendant be released to post-release supervision four months before the end of the "maximum

imposed term of imprisonment.” What is the maximum imposed term? Eighteen months? Or the 12 months that result after accounting for good time credit? If it is the latter, then (assuming a full award of good time credit) this defendant must be released to post-release supervision after serving 8 months of her sentence. If it is the former, then the defendant would not be released until serving 14 months (four months before the end of the 18-month term imposed at sentencing). Look for a future post from sentencing-guru Jamie Markham addressing post-release supervision generally and interpreting “maximum imposed term of imprisonment” for purposes of calculating a Level A1 defendant’s release date.

The term of imprisonment for a Level A1 DWI may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 120 days. Note that this term of special probation imprisonment is significantly shorter than the mandatory minimum active term of 12 months. In this respect, Level A1 punishment departs from the sentencing requirements for other levels of impaired driving for which the mandatory minimum term of imprisonment matches the minimum term of imprisonment required as a condition of special probation. If a Level A1 defendant is placed on probation, the judge must require the defendant to abstain from alcohol for at least 120 days and may require abstinence verified by CAM for the entire term of probation. As is the case for probationary sentences imposed for other levels of DWI, the judge must require as a condition of probation for a Level A1 sentence that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6. Upon conviction of Level A1 impaired driving, the defendant’s driver’s license is permanently revoked pursuant to amended G.S. 20-19(e). Though a license permanently revoked under G.S. 20-19(e) may, under certain circumstances, be conditionally restored after it has been revoked for three years, a person whose license was revoked for conviction of Level A1 DWI must, in addition to meeting other conditions, have ignition interlock in order to have his or her license restored.

Laura’s Law affects other types of DWI sentencing as well. The act increases from 60 days to the term of probation the maximum period for which abstinence and CAM may be required of defendants sentenced for Level 1 or Level 2 DWIs. The act repeals G.S. 20-179(h1)(h2), which formerly prohibited a court from requiring CAM if it determined the defendant “should not be required to pay the costs” of CAM and the local government entity responsible for the incarceration of the defendant was unwilling to pay for CAM.

The act further sanctions CAM by amending G.S. 15A-534(i) to authorize abstinence from alcohol and CAM as a pretrial release condition for a defendant charged with an offense involving impaired driving who has been convicted of an offense involving impaired driving within seven years of the offense for which the defendant is being placed on pretrial release.

Laura’s Law also enacts new G.S. 7A-304(a)(10), which requires that a defendant sentenced pursuant to G.S. 20-179 pay, in addition to other applicable costs, a fee of \$100.

As Jeff noted earlier this week, we’re fortunate to have such wonderful colleagues at the School of Government. Two of those folks, Jamie Markham and Alyson Grine, deserve special mention here for sharing their thoughts on Laura’s Law, which have informed and improved this post.