



Post-Release Supervision for Aggravated Level One DWI Offenders

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Shea Denning summarized [S.L. 2011-191](#), Laura's Law, in a [prior post](#). To recap, the law adds a new punishment level for impaired driving sentencing, Aggravated Level One (hereinafter Level A1), for situations in which three or more grossly aggravating factors apply. Today's post picks up on some of the points Shea mentioned in her earlier post. I especially want to focus on the law's requirement of post-release supervision of Level A1 offenders.

The permissible punishment for a Level A1 sentence is a fine of up to \$10,000 and sentence that includes a minimum term of not less than 12 months and a maximum term of not more than 36 months. The court can suspend the sentence only if it requires the offender to serve a split sentence of 120 days. Though the law appears to instruct the judge to impose a minimum sentence, the effect of that minimum is not altogether clear. Typically, the minimum imposed in a DWI sentence is for determining parole eligibility under [G.S. 15A-1371](#) (which says that a DWI inmate is parole eligible upon completion of the lesser of the minimum or one fifth of the maximum penalty allowed by law, less good time), but Laura's Law says that Level A1 inmates are not eligible for parole.

The law does, however, say that Level A1 inmates shall be released from the Department of Correction "on the date equivalent to the defendant's maximum imposed term of imprisonment less four months and shall be supervised by the Division of Community Corrections under and subject to the provisions of Article 84A of Chapter 15A of the General Statutes . . ." [Article 84A of Chapter 15A](#) is the post-release supervision article. Up to now, it has only applied to Class B1 through E felons, but come December 1—under Laura's Law and Justice Reinvestment—it will apply to all felons and Level A1 DWI misdemeanants. Though no conforming change was made to Article 84A ([G.S. 15A-1368.2\(c\)](#), specifically), new G.S. 20-179(f3) indicates the period of supervised release for Level A1 DWI offenders will be the same as the amount of time the offender will have remaining on his or her active sentence when released: four months.

So when exactly does a Level A1 DWI inmate get released onto PRS? On "the date equivalent to the defendant's maximum imposed term of imprisonment less four months," right? The problem is that that statutory language is slightly different from the language in existing law for determining PRS release dates for felons. Under G.S. 15A-1368.2(a), a felon is released from prison for post-release supervision "on the date equivalent to his maximum imposed prison term less nine months [or 12 months for Class B1–E felons or 60 months for sex offenders, as the case may be under new law], *less any earned time awarded by the Department of Correction.*" DWI inmates don't get earned time, but they do get good time under [G.S. 15A-1355\(c\)](#), [G.S. 148-13\(b\)](#), and applicable [DOC regulations](#). And the good time rule—which applies to all DWI offenders regardless of punishment level—is more generous to inmates than the earned time rule in that it cuts DWI sentences in half. The thing is, there is no parallel provision in Laura's Law about subtraction of good time from the offender's "maximum imposed term of imprisonment" for determining the PRS release date. In other words, the law does *NOT* say the person is released four months early, *less good time*.

It remains to be seen how DOC and the Post-Release Supervision and Parole Commission will interpret that difference. The [fiscal note](#) accompanying the bill, prepared in consultation with DOC, figured that Level A1 offenders would serve the same average proportion of their maximum term as Level One DWI offenders, 41 percent, so they must have assumed that good time will apply. If that's right, then any Level A1 DWI maximum sentence from 12 months to 24 months will be functionally the same from the (well-behaved) defendant's point of view. It will be a 12-month sentence, because that's as low as you can go without dipping below the statutory mandatory minimum

under [G.S. 20-179\(p\)\(2\)](#), which says that good time credit “may not be used to reduce that mandatory minimum period.” There is no requirement that the inmate have completed substance abuse and assessment and treatment prior to release on post-release supervision; that limitation applies only to releases on parole under G.S. 20-179(p)(3).

Even if you set aside the good time credit issue, there is still a question about whether a person may be released on post-release supervision before serving the 12-month mandatory minimum for a Level A1 DWI. Different statutory provisions point in different directions. New G.S. 20-179(f3) says a person “shall be released” when he or she is four months from the maximum, but existing G.S. 20-179(p)(2) says a defendant “shall serve the mandatory minimum period of imprisonment.” G.S. 20-179(p)(3) isn’t really helpful either way; it says a person may not be *paroled* unless he has served his mandatory minimum, but it makes no mention of release on post-release supervision. To flesh that out a little, suppose a defendant is sentenced to a 14-month maximum. G.S. 20-179(f3) would say release him to PRS at 10 months (or 8 months if you allowed the maximum to be reduced to 12 months by good time credit). But G.S. 20-179(p)(2) says he *must* serve the statutory 12-month minimum. Comparable “truth-in-sentencing” principles under Structured Sentencing ([G.S. 15A-1340.13\(d\)](#)) would say he must serve the minimum, but Structured Sentencing minimums and maximums are designed to avoid this very problem: there is a constant 20 percent difference between every minimum and its corresponding maximum, with additional time built in to the maximum for the possibility of post-release supervision revocation. The DWI sentencing law simply isn’t set up that way. So again, we’ll need to wait to see how DOC will resolve the ambiguity.

(If it’s any consolation, release-date calculation is little more straightforward for defendants who receive a split sentence for Level A1 DWI: under G.S. 148-13(f) and DOC regulations, split sentences are not eligible for good time.)

Once a person is released onto post-release supervision, he or she will have four months of PRS under the supervision of the Division of Community Corrections. There is no such thing as “unsupervised” PRS. An offender who violates a condition of that supervision can be arrested and held for a hearing under the procedure set out in [G.S. 15A-1368.6](#) (a preliminary hearing within 7 days, a final hearing within 45 days, etc.). Under changes made by the Justice Reinvestment Act, the Parole Commission can only fully revoke PRS for sex offenders, offenders who commit a new crime, or offenders who abscond. Offenders who violate in other ways get returned to prison for three months—which, for these DWI offenders who have four months of active time left to serve, will just about max out the sentence. In fact, if DOC awards good time to those offenders who are returned to prison, they will finish their four remaining months of active time in two months, and will thus max out and not be re-released into the community at all. It’s not clear, though, whether DOC will (or even can) do that. [G.S. 15A-1368.3\(c\)\(4\)](#) allows DOC to award earned time credit to reimprisoned Structured Sentencing offenders, but the new law does not mention any similar authority regarding good time for DWI offenders.