Sentence Reduction Credits and Parole for DWI Inmates

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Last April, I wrote a post touching on the sentence reduction credit rules applicable to DWI inmates. In short, DWI inmates fall under the same "good time" credit rules applicable to certain pre–Structured Sentencing inmates: one day of credit for every day served in custody without an infraction of inmate conduct rules. In other words, a well-behaved inmate can expect to have his or her sentence cut in half by good time credit. (Sound familiar? That's the same credit rule that may or may not apply to certain life-sentenced inmates from the 1970s. We'll soon find out if it does.)

The good time credit rule is set out in Department of Correction administrative rules enacted pursuant G.S. 148-13(b), which authorizes the Secretary of Correction to issue regulations regarding sentence deductions for inmates serving prison or jail terms for impaired driving. The Secretary's rules, available here, *must* be distributed to and followed by local jail administrators under G.S. 148-13(e). The rules do not, however, apply to inmates serving split sentences for DWI; G.S. 148-13(f) exempts special probation terms from the rules' coverage. Additionally, G.S. 20-179(p)(2) places a limit on the extent to which punishment may be ameliorated: good time credit may not reduce a DWI inmate's sentence below the mandatory minimum period of imprisonment required for impaired driving. For example, a person sentenced to a 50 days active for a Level One DWI could receive only 20 days of good time credit, not the 25 days that would cut the sentence in half; the sentence could never dip below the 30-day mandatory minimum.

So that's how you figure sentence reduction credits for DWI inmates. But good time credits are not the only way DWI inmates might get out of jail or prison early. DWI is the last bastion of parole.

Under G.S. 15A-1370.1, all prisoners serving sentences for impaired driving are subject to the parole-eligibility rules of Article 85 of Chapter 15A of the General Statutes. The basic rule is that a DWI inmate is eligible for parole after serving his or her minimum sentence or one-fifth the maximum penalty allowed by law for the offense, whichever is less. It's not crystal clear what G.S. 15A-1371(a) means by the "maximum penalty allowed by law for the offense," but the Post-Release Supervision and Parole Commission uses the maximum sentence for each *level* of offense (for example, 2 years for a Level One, 1 year for a Level Two, 6 months for a Level Three, and so on). [There's some authority suggesting that 24 months is the theoretical maximum penalty for *any* DWI, *see* State v. Gregory, 154 N.C. App. 718 (2002) (DWI considered as a Class 1 misdemeanor for Rule 609 impeachment purposes), but the Commission's level-specific rule seems a better fit in this context.] The parole-eligibility period is reduced by good time credits (see G.S. 15A-1371(a) and G.S. 15A-1355(c)), but in no case can the defendant be paroled before serving the mandatory minimum period of imprisonment for his or her level of DWI punishment. G.S. 20-179(p)(3). Once someone is parole eligible, the Post-Release Supervision and Parole Commission decides whether to parole them under criteria set out in G.S. 15A-1371(d).

An example might be helpful to illustrate the basic parole-eligibility rule. Suppose a Level One offender is sentenced to a minimum of 6 months and a maximum of 18 months. If he serves his time without infraction, he will reach his *outright release* (or "max-out") date in 9 months—that's 18 months cut in half by good time credit. He will be *parole eligible* after 2.4 months—that's one-fifth of 24 months (the maximum penalty allowed for a Level One offender) cut in half by good time credit. Notice how the 6-month minimum imposed by the court in this example is essentially meaningless; one-fifth of the maximum possible penalty is less than the minimum, and so it controls parole eligibility. If the court wanted to impose a minimum with any bite, it would need to choose something between 30 days (the mandatory minimum) and 4.8 months (one-fifth the maximum authorized penalty).

That's pretty complicated, but unfortunately it's just the beginning. In addition to the rules already described, for DWI inmates with a maximum sentence of not less than 30 days nor as great as 18 months, parole is *presumptive* after the inmate completes one-third of the maximum sentence. G.S. 15A-1371(g). In other words, DOC or the jailer may, in their discretion, parole the inmate unless the Post-Release Supervision and Parole Commission tells them they may not for one of the reasons set out in G.S. 15A-1371(g). (That provision does not, however, make any reference to credit reductions, which I interpret to mean none should apply.)

Another illustration would probably be helpful. Suppose a Level Two DWI inmate is sentenced to a minimum of 30 days and a maximum of 12 months (and suppose further that she serves her time without infraction). She will reach her outright release date after 6 months—that's 12 months cut in half by good time credit. What about parole? Under the baseline parole rule discussed above, she will be *parole eligible* after 15 days—that's 30 days (the minimum, which in this case *is* less than one-fifth the maximum) cut in half by good time credit. That means the Parole Commission *could* parole her after 15 days. Additionally, because her maximum falls within the 30-day-to-18-month window, parole is *presumptive* for her after four months—that's one-third of the maximum. Unless the Parole Commission affirmatively steps in to say otherwise, DOC (or the jailer if she's serving her time in a jail) may parole her after four months.

The final catch—and it's a big one—is that a defendant may not be released on parole unless he has obtained a substance abuse assessment and completed any recommended treatment or training program. G.S. 20-179(p)(3). Because it's difficult to get that done in prison or jail, many inmates cannot be released on DWI parole. But defendants who complete their assessment and training before sentencing (which they sometimes do to qualify for the mitigating factor available under G.S. 20-179(e)(6)) may be parole eligible or presumptively parolable well in advance of their outright release date. Which brings me to my final question: are any jailers out there paroling DWI inmates?