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Top 3 Questions About Level A1 DWI Sentences

May 7th, 2014



By Shea Denning

The most serious level of misdemeanor DWI is Aggravated Level One, which I generally refer to as Level A1. A defendant convicted of driving while impaired is subject to sentencing at Level A1 if three or more grossly aggravating factors apply. [G.S. 20-179\(c\)](#). Typically, defendants sentenced at this level are repeat offenders, though it is possible to reach Level A1 if one drives while impaired with a person under 18 in the vehicle, with a license that is civilly revoked for an earlier DWI charge that did not result in conviction, and, in the process, causes serious injury to another.

A defendant sentenced at Level A1 may be fined up to \$10,000 and must be sentenced to a term of imprisonment that includes a minimum term of not less than 12 months and a maximum term of not more than 36 months. G.S. 20-179(f3). The term of imprisonment 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.

Because Level A1 is a relatively new level of punishment—it applies to offenses committed on or after December 1, 2011—many litigants, judges, and defendants have questions about the legal requirements for such sentences and how the sentences are administered.

Below are the three questions I hear most often.

1. May the judge credit against a Level A1 sentence the time a defendant spent in inpatient treatment?

Yes. [G.S. 20-179\(k\)](#) allows a judge to credit against a term of imprisonment ordered for *any level of DWI*, including Level A1, the time a defendant was an inpatient at a treatment facility operated or licensed by the State for the treatment of alcoholism or substance abuse. To be eligible for credit, the treatment must have occurred *after* the defendant committed the DWI offense for which he or she is being sentenced.

The judge also may order that special probation (in other words, a split sentence) imposed pursuant to a suspended Level A1 sentence be served at a facility operated or licensed by the State for the treatment of alcoholism or substance abuse. The defendant must have been accepted by the facility for admission or commitment as an inpatient and must bear the expense of any treatment unless the judge orders the State to absorb the costs.

2. How much of an active Level A1 sentence will a well-behaved defendant actually serve?

The defendant will serve the maximum term of imprisonment imposed, less four months. A defendant sentenced at Level A1 is not eligible for parole. The defendant must, however, be released to post-release supervision four months before the expiration of his or her maximum term. [No good time credit](#) is being awarded to reduce Level A1 sentences, even though the applicable Division of Adult Correction (DAC) [regulations](#), which were last amended before the enactment of Aggravated Level One sentencing, provide that inmates “convicted of Driving While Impaired” are awarded good time credit at the rate of one day deducted for each day served with good behavior. Though the regulations do not distinguish among levels of DWI, DAC has determined that the credit does not apply to Level A1 sentences.

Thus, regardless of how he or she behaves, a defendant sentenced to 36 months imprisonment for Level A1 DWI will be released to post-release supervision after serving 32 months. A defendant sentenced to 12 months imprisonment for Level A1 DWI will be released to post-release supervision after serving 8 months imprisonment.

3. May a judge allow a defendant to serve a Level A1 sentence on weekends?

Yes. A judge may order a term of imprisonment for any level of DWI to be served on weekends. G.S. 20-179(s), which applies to all levels of DWI sentencing, provides that if the defendant is ordered to a term of 48 hours or more, he or she must be required to serve 48 continuous hours of imprisonment to receive credit for time served. This means that a judge could order an entire 36-month Level A1 sentence to be served in 48-hour increments.

Split sentences for Level A1 DWIs also may be served on weekends and must likewise be served in 48-hour increments. Any non-continuous period of imprisonment for a split sentence may only be served in a designated local confinement or treatment facility rather than in a DAC prison. See [G.S. 15A-1351\(a\)](#).

Tags: [credit](#), [DWI](#), [DWI sentencing](#), [good time](#), [Level A1](#)

This entry was posted on Wednesday, May 7th, 2014 at 10:37 AM and is filed under [Motor Vehicles](#), [Sentencing](#). You can follow any responses to this entry through the [RSS 2.0](#) feed. You can [leave a response](#), or [trackback](#) from your own site.

5 Responses to “Top 3 Questions About Level A1 DWI Sentences”

1. *james anderson, attorney* says:

[May 7, 2014 at 11:12 AM](#)

Judges give a minimum and maximum sentence under level A1. So does good behavior come into play at all as to when the defendant is released (less 4 months)? Or are you saying the release will always be based on the maximum sentence?

[Reply](#)



Shea Denning says:

[May 8, 2014 at 12:45 PM](#)

The release will always be based on the maximum sentence. The minimum sentence has no effect since there is no parole.

[Reply](#)

- *Leonard Hilty* says:

[August 6, 2014 at 1:32 PM](#)

Ms. Denning, We are just beginning to see this in my district. The senior ADA in our district didn't know A1 existed, until today. Our judges read the statute as saying that there is only one active sentence they can give: "12 to 36 months." Thus, every "A1" will serve 32 months. Correct? Your original article seems to suggest specific sentences of "12" or "36" or some such. Help! Please enlighten those of us out here in the sticks.

[Reply](#)

2. *Andrew Hogan* says:

[May 7, 2014 at 12:17 PM](#)

Isn't CAM required as a condition of a suspended sentence as well?

[Reply](#)



Shea Denning says:

[May 8, 2014 at 12:48 PM](#)

Yes, abstinence from alcohol for at least 120 days as verified by a continuous alcohol monitoring system (CAM) is required. A substance abuse assessment and the education or treatment recommended by that assessment also is required as a condition of probation.

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