

STUDY OF DWI
SENTENCING
AND CORRECTIONAL
POLICIES AND
PRACTICES

NOVEMBER
2019



SENTENCING FOR IMPAIRED DRIVING OFFENSES

PUNISHMENT LEVELS	FACTORS	PUNISHMENT	SENTENCE CREDITS	RELEASE
Aggravated Level One (20-179(f3))	3 grossly aggravating factors apply. (20-179(c))	Active sentence range: Min: 12 months Max: 36 months Or split sentence: at least 120 days	Not eligible.	Not parole eligible; Release at maximum imposed term less 4 months; 4 months PRS (20-179(f3))
Level One (20-179(g))	Grossly aggravating factor #4 ¹ or 2 other grossly aggravating factors apply.	Active sentence range: Min: 30 days Max: 24 months Or split sentence: at least 30 days ²	Eligible. <ul style="list-style-type: none"> • Good time: day-for-day. • Gain time: days per month for participation in programs or work. • Merit time: days per event. (15A-1355(c), (d), 20-179(p), 148-13) 	Parole eligible: <ul style="list-style-type: none"> • At any time if there is no minimum sentence, or • After serving minimum sentence imposed or one-fifth of the maximum penalty allowed by law for the offense, whichever is less, less good time. • Must have served statutory minimum for that level. • Must have obtained a substance abuse assessment and completed any recommended treatment or training program or be paroled into a residential treatment program. (15A-1371, 20-179(p)(3))
Level Two (20-179(h))	1 grossly aggravating factor (other than #4 ^a) applies.	Active sentence range: Min: 7 days Max: 12 months Or split sentence: at least 7 days ³		
Level Three (20-179(i))	Aggravating factors substantially outweigh mitigating factors. (20-179(d) and (e))	Active sentence range: Min: 72 hours Max: 6 months Or split sentence: at least 72 hours Or community service: 72 hours		
Level Four (20-179(j))	No aggravating or mitigating factors or factors substantially counterbalance each other.	Active sentence range: Min: 48 hours Max: 120 days Or split sentence: 48 hours Or community service: 48 hours		
Level Five (20-179(k))	Mitigating factors substantially outweigh aggravating factors.	Active sentence range: Min: 24 hours Max: 60 days Or split sentence: 24 hours Or community service: 24 hours		

¹ Child under 18 or person with mental or physical disability in the vehicle at the time of the offense.

² Not less than 10 days if a condition of special probation is imposed to require that a defendant abstain from alcohol consumption and be monitored by a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety, for a period of not less than 120 days.

³ Abstain from consuming alcohol for at least 90 consecutive days, as verified by a continuous alcohol monitoring system.

Offenses

- Impaired driving. (G.S. 20-138.1)
- Impaired driving in a commercial vehicle. (G.S. 20-138.2)
- Operating a commercial vehicle after consuming alcohol. (Second or subsequent) (G.S. 20-138.2A)
- Operating a school bus, school activity bus, child care vehicle, ambulance, other EMS vehicle, firefighting vehicle, or law enforcement vehicle after consuming alcohol. (Second or subsequent) (G.S. 20-138.2B)

Sentence

A sentence to imprisonment must impose a maximum term and may impose a minimum term. The impaired driving judgment may state the minimum term or may state that a term constitutes both the minimum and maximum terms. (G.S. 15A-1351(b))

Place of confinement for active sentences

For convictions before January 1, 2015:

- DWI defendants who have no prior DWI convictions under G.S. 20-138.1 and who have never been previously imprisoned in a local confinement facility for a violation of Chapter 20 must be sentenced to the local jail. The rule, which applies “notwithstanding any other provision of law,” does not turn on the length of the sentence. (G.S. 20-176(c1))
- DWI defendants being sentenced for a subsequent conviction under G.S. 20-138.1 or who have previously been imprisoned in a local confinement facility for a violation of Chapter 20:
 - Must be sentenced to the jail if the sentence imposed is for 90 days or less, except as provided in G.S. 148-32.1(b).
 - May probably be sentenced to the local jail or to DAC, in the court’s discretion, if the sentence imposed requires confinement of 91 to 180 days, although no statute addresses this category of DWI defendant directly.
 - Must be sentenced to DAC if the sentence or sentences imposed require confinement for more than 180 days. (G.S. 15A-1352(a))

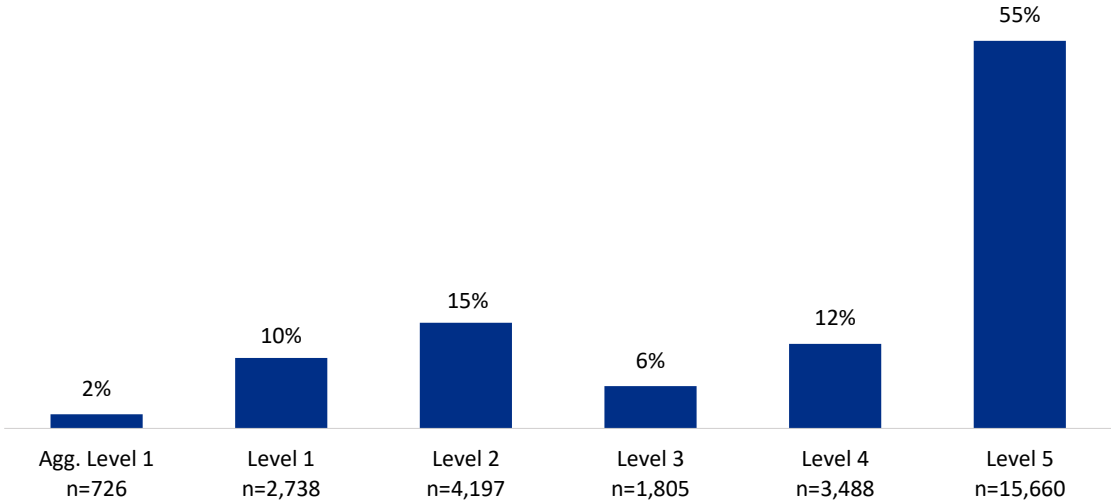
For convictions on or after January 1, 2015:

- DWI defendants must be sentenced to the Statewide Misdemeanant Confinement Program. (G.S. 15A-1352(f))

APPENDIX D

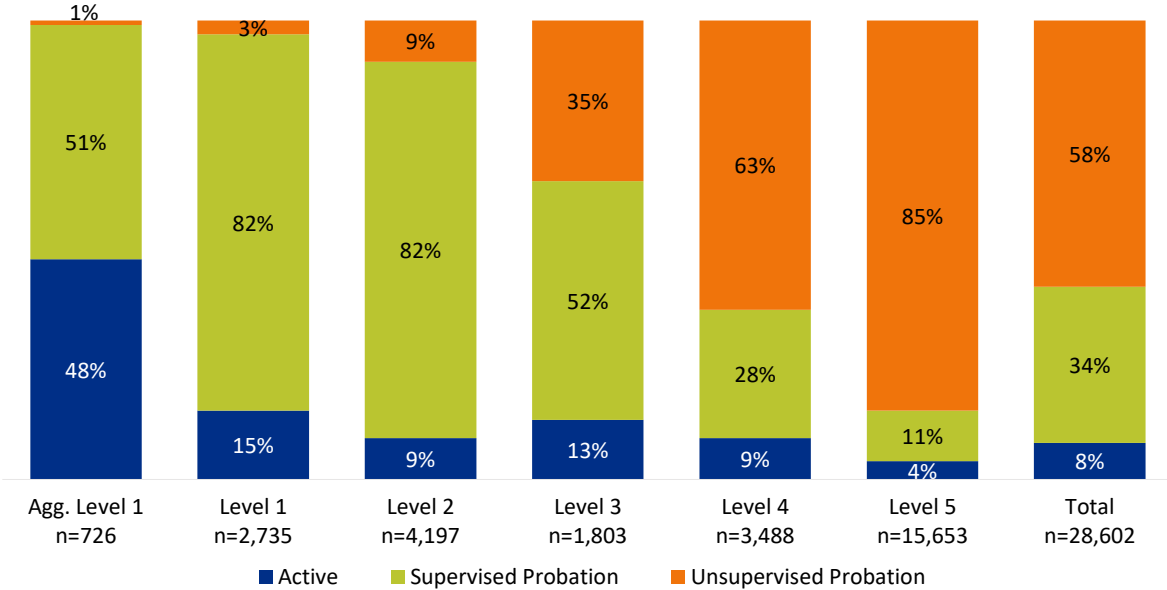
DWI SENTENCING AND CORRECTIONAL DATA

Figure D.1
FY 2018 DWI Convictions by Punishment Level (N=28,614)



SOURCE: NC Sentencing and Policy Advisory Commission, FY 2018 DWI Conviction Data

Figure D.2
Type of Sentence Imposed by Punishment Level



Note: This figure excludes 12 of the 28,614 DWI convictions in FY 2018 for which a type of sentence imposed could not be determined.

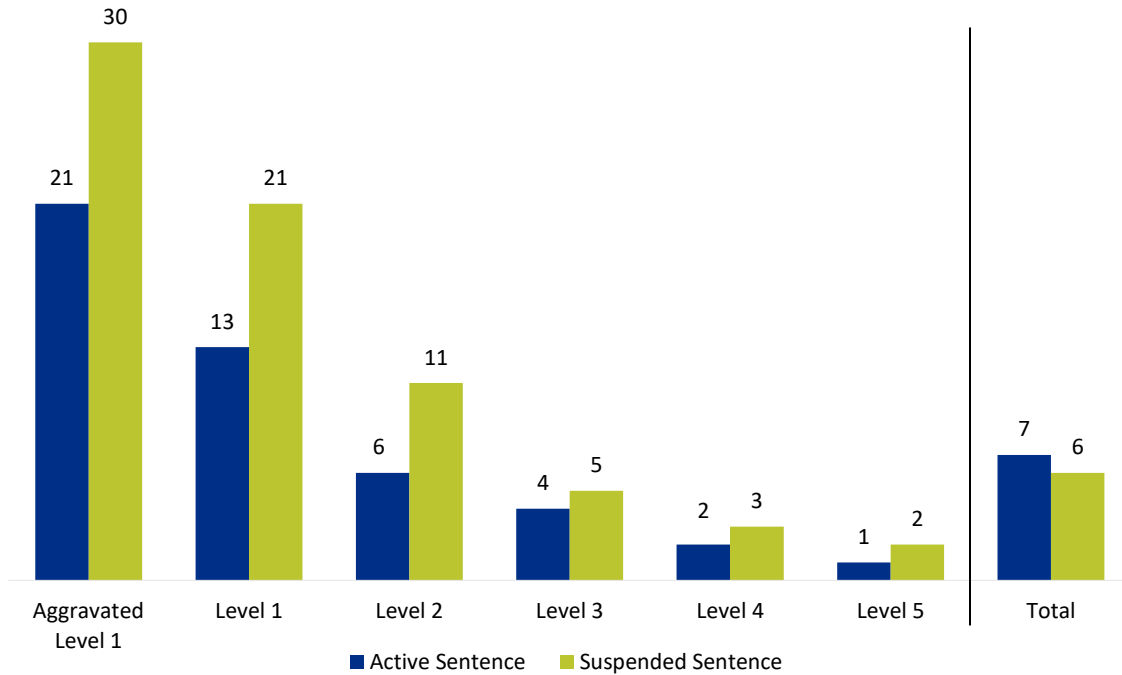
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2018 DWI Conviction Data

Table D.3
Average Length of Maximum Active Sentence Imposed by Punishment Level

DWI Punishment Level	Statutory Minimum	Average Maximum Active Sentence	Statutory Maximum
Agg. Level 1	12 months	21 months	36 months
Level 1	30 days	13 months	24 months
Level 2	7 days	6 months	12 months
Level 3	72 hours	4 months	6 months
Level 4	48 hours	2 months	120 days
Level 5	24 hours	1 month	60 days
Total		7 months	

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2018 DWI Conviction Data

Figure D.4
Average Length of Maximum Sentence Imposed by Punishment Level (in months)



SOURCE: NC Sentencing and Policy Advisory Commission, FY 2018 DWI Conviction Data