



STATE OF DELAWARE
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CRIMINAL JUSTICE COUNCIL

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MEMORANDUM

To: SENTAC Board Members
From: Thomas F. MacLeish, Director Statistical Analysis Center
Analyst: Spence Price
Subject: Habitual Offender Information

Questions arose at the last SENTAC meeting on March 21, 2014, regarding Delaware's Habitual Offender statute (Title 11 § 4214). At that time, the Center offered to provide the following information to the Commission:

- The number of Defendants declared per year on §4214(a) and (b) declarations;
- The total number of declarations for every individual declared in each year;
- How many Defendants are currently serving sentences under §4214(a) and (b);
- The lead charge breakdown for each §4214 sentence; and
- The average sentence length imposed for the §4214(a) sentences.

Identification of individuals who are declared under §4214(a) and (b) varies, with some individuals having their declaration in multiple areas on a sentence order, while others are only declared in the docket. The Center maintains a research database of historical habitual offender declarations. That database represents extensive efforts to obtain information that is not consistently recorded in electronic court databases, and it includes periods that pre-date electronic records. We believe that our processes of searching docket entries and multiple locations in sentence orders yields nearly complete accounts of declarations over the past 15 or so years. While our confidence in thoroughness diminishes as we go back from that point of time, we believe that counts of life sentences under subsection (a) or (b) are reasonably complete.

Chart 1 shows the number of individuals declared under §4214(a) and (b) each year, for the last 14 years as well as the first 4 months of 2014. From 2009 through 2012 declarations continually decreased from year to year, however in 2013, declarations increased significantly, more than doubling 2012 numbers and surpassing the previous high year of 2009 by 78 declarations. If current trends continue in 2014, the total number of §4214 declarations could exceed 300.

Chart 1

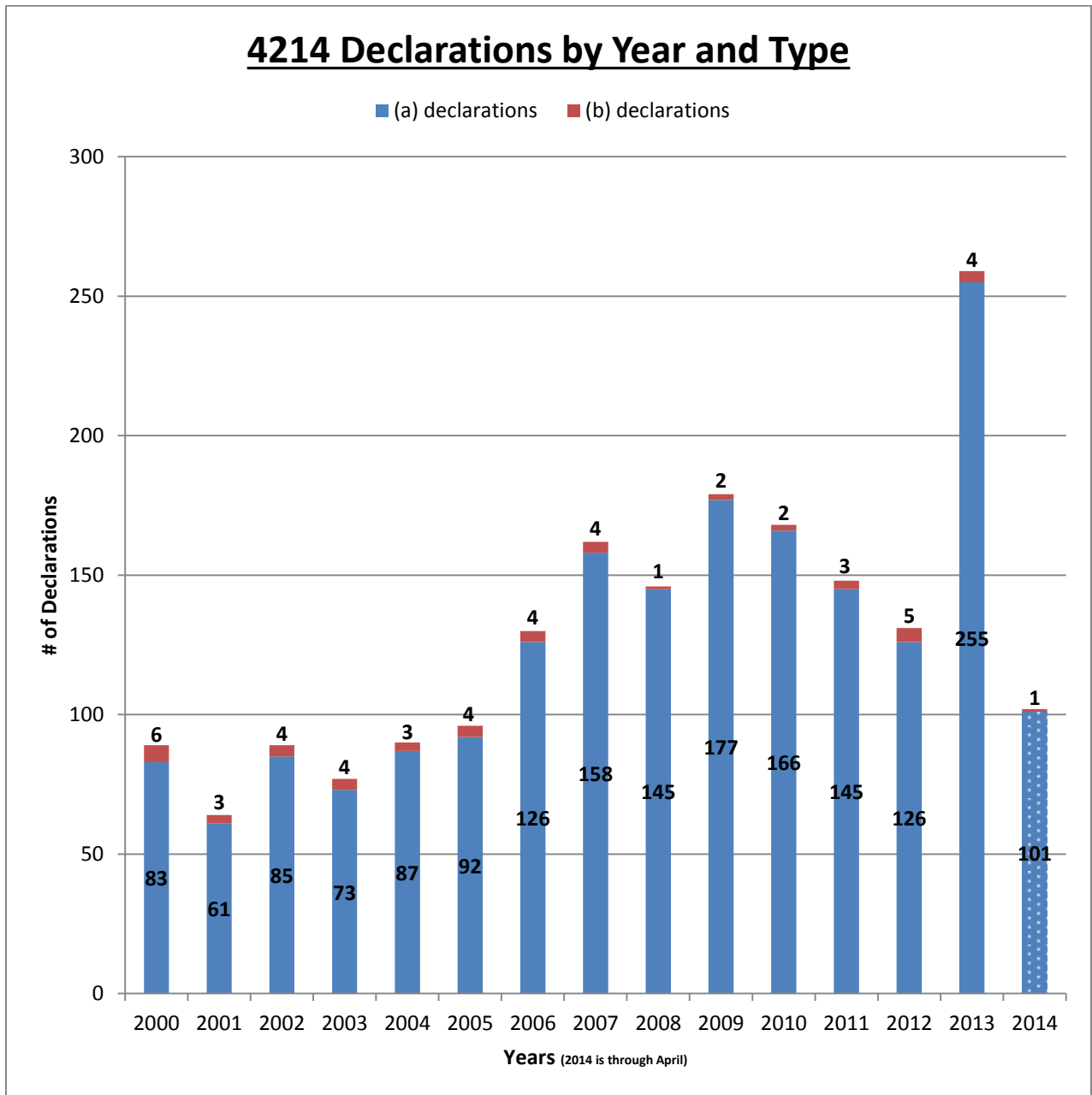


Table 1 shows the number of §4214 declarations by year and the sequence number of the most recent declaration for the last 14 years and the first 4 months of 2014. In this analysis, declaration sequence numbers are defined as the total number of times that an individual has been declared including the current declaration. For example, if an individual is declared for the first time in 2001, a second time in 2009, and a third time in 2013 that individual will appear in Table 1 under 1st Declaration in 2001, 2nd Declaration in 2009, and 3rd Declaration in 2013. Table 1 only shows the past 14 years with the first 4 months of 2014. Individuals with declarations prior to 2000 are shown in the counts in Table 1.

Similar to Chart 1, Table 1 shows substantial growth in the number of 1st and 2nd sequence declarations for 2013 as well as a possible additional increase in 2014 for 1st, 2nd, 3rd, and 4th sequence declarations if trends continue similar to the first third of 2014.

Table 1

4214 Declarations by Year and Sequence # of Declaration

Year	1st Declaration	2nd Declaration	3rd Declaration	4th Declaration	5th Declaration
2000	86	5			
2001	55	7	2		
2002	78	11	2		
2003	61	15	1		
2004	71	16	4		
2005	64	29	3		
2006	109	20	1		
2007	139	18	6		
2008	119	25	3		
2009	137	31	9	2	
2010	142	21	4	1	
2011	112	31	4	1	
2012	98	22	7	3	1
2013	199	49	9	2	
2014	82	11	7	2	

Table 2 addresses the number of individuals who are currently serving sentences under §4214(a) and (b) as of April 7, 2014. For this analysis the Center performed a manual crosscheck of a Level V snapshot of the Department of Correction population and the Center’s habitual offender database resulting in 766 individuals needing manual review. Of those 766 individuals, 667 individuals were serving a Level V term, with at least some portion of that term stemming from a habitual offender sentence. Seventy-four of the 667 are currently serving a life term as the result of a habitual offender declaration under subsection (b). In addition, there were 192 individuals serving terms equal to the statutory maximum as the result of their fourth or subsequent felony conviction under subsection (a) and 57 individuals serving terms longer than the statutory maximum. There were 304 individuals serving non-life terms for habitual offender sentences that were not on Title 11 violent felonies. At the time of this Level V snapshot of DOC’s population, there were 4,557 individuals serving a Level V sentence. The 667 individuals serving time as the result of a §4214 declaration make up 14.6% of the total Level V sentenced population as of April 7, 2014.

Table 2

Individuals Currently Serving a Level V Term Under a Habitual Offender Declaration¹

<i>Category</i>	<i>Count in 4/7/2014 L5 Snap.</i>
Subsection b, life	74*
Subsection a (min=max, not life)	192
Subsection a (min>max, not life)	57
Subsection a, life	16
Subsection a, Title 11 VF, <max	6
Subsection a, Pre-min=max (7/10/1996)	11
Unresolved	7
Not Title 11 violent felony, not life	304
<i>Total</i>	<i>667</i>

* Of the 74, (49) are Title 11 and (25) Title 16

¹ Individuals in this count could be serving longer sentences on non-habitual sentences, but at the time of analysis had at least 1 charge declaring them as a habitual offender.

Table 3 is a breakout of the lead charge for each §4214 declaration for the last 5 years plus the first 4 months of calendar year 2014. Failure to register as a sex offender was the most frequent charge declared under §4214 for 2013 and thus far in 2014. Burglary 3rd was the most frequent charge declared under §4214 for the prior 4 years in Table 3.

The most difficult question to answer regarding individuals sentenced pursuant to Delaware’s habitual offender statute is in regards to the “average sentence length” of §4214(a) sentences. This question and subsequent answers can be misleading due to the vast range of sentence lengths seen under this statute. Table 4 provides a sentencing distribution by quartiles. Quartiles are the three points that divide the data set into four equal groups, with each group comprising a quarter of the sentences. The median sentence length for the first quartile, or the 25th percentile, is the middle sentence between the shortest sentence and the median of all the sentences. The next quartile is the median of all the sentences, and the third quartile is the median sentence between the overall median sentence and the longest sentence of the set. Also included in Table 4, is the percent of all §4214(a) sentences that are less than 1 year. The Center is displaying sentencing distributions in this manner rather than an overall average sentence length to show the most thorough sentencing picture for all §4214(a) sentences. For the purpose of this analysis, life sentences under subsection (a) are included. As Table 4 illustrates, median sentence lengths under §4214(a) have remained similar since 2009, except for a decrease in 2013 of the overall median sentence length. In addition to the decrease in the overall median sentence length in 2013, there is also an increase in the percentage of sentences less than 1 year.

Table 4

4214a Declarations by Year and Sentence Length Info

Year	25th Percentile	Median Sent	75th Percentile	% of Sentences < 1 year
2013	6 months	18 months	60 months	36.5%
2012	6 months	24 months	63 months	35.0%
2011	6.4 months	24 months	60 months	34.0%
2010	6 months	24 months	60 months	31.0%
2009	6 months	18 months	36 months	36.0%