



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
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SUBJ: Update: Felony C Sentencing Patterns and
SENTAC Compliance for 2004, 2005, and 2006

Purpose and Context

The following analysis summarizes Superior Court sentencing patterns for Felony C cases with guilty dispositions for calendar years 2004, 2005, and 2006. This analysis serves as a partial, but targeted monitoring of SENTAC compliance. Felony C cases are selected because they are the least serious crime where the “presumptive” sentence requires at least some Level V incarceration. The presumptive range can be anywhere from one day in jail up to 30 months in prison. The legal maximum sentence for a Felony C is 15 years in prison. Felony B cases provide less information regarding SENTAC compliance because the law requires that a minimum term of 2 years at Level V be set for all Felony B sentences. Felony D cases, with a few exceptions, may be sentenced to probation according to SENTAC guidelines. Therefore while a full analysis of each level of crime severity would be important, limited resources for the detailed analysis that is needed to assess SENTAC compliance makes the analysis of Felony C cases the most insightful area of inquiry.

A Felony C case is defined in this analysis as a Superior Court conviction that contains at least one Felony C charge, with that charge being the “most serious charge” at the time of sentencing. If there is more than one Felony C charge at the time of sentencing, the Felony C charge with the highest level of sentencing is used as the “most serious charge.” This approach is taken because in some cases, secondary Felony C charges in a case are sentenced to a less serious sentence than the “lead” charge.

When a Felony C charge receives a “credit for time served” sentence for time spent in pretrial detention, it is counted as a Level V term and is viewed as being in compliance with SENTAC guidelines. The length of time spent in detention determines whether the term is considered a jail sentence (one year or less at Level V), or prison sentence (greater than one year at Level V).



One of the difficulties of preparing this SENTAC compliance study is that time served information is not collected or stored in a standard format and Superior Court sentence order language varies when a defendant is sentenced to time served. In this analysis, time served sentence identification relied on a combination of explicit or implicit indicators found in sentence orders and was compared and confirmed with Department of Corrections detention records. This process provides the most accurate time served sentencing information. As a result of this process an addition 187 cases were classified as Level V sentences in 2004, 140 case in 2005, and 104 cases in 2006. The decline in these numbers can be attributed to better identification of time served sentences on sentencing orders.

SENTAC Guidelines and Compliance

The presumptive SENTAC sentence for a Felony C conviction is a Level V term up to 30 months. Full SENTAC compliance would show that all offenders convicted of a Felony C charge would serve at least one day in jail or receive credit for time served in pre trial detention. At the high end, except without extensive criminal history or aggravating circumstances, the offender is sentenced presumably within the 1 day to 30-month range. Table 1 shows the Judicial Decision to Incarcerate (JDI) percentages and the number of cases that exceeded the 30-month presumptive sentence threshold for lead charge Felony C’s for 2004, 2005, and 2006.

**Table 1
Lead Charge Felony C SENTAC Compliance for years 2004, 2005,
and 2006**

Year	# Of Felony C Sentences	# Of Level V Sentences	JDI	> Than 30 Month Sentence	% > Than 30 Months
2004	431	321	74.50%	40	9.30%
2005	439	342	77.90%	66	15.00%
2006	411	308	74.90%	40	9.70%
Totals/Avgs	1281	971	75.80%	146	11.40%

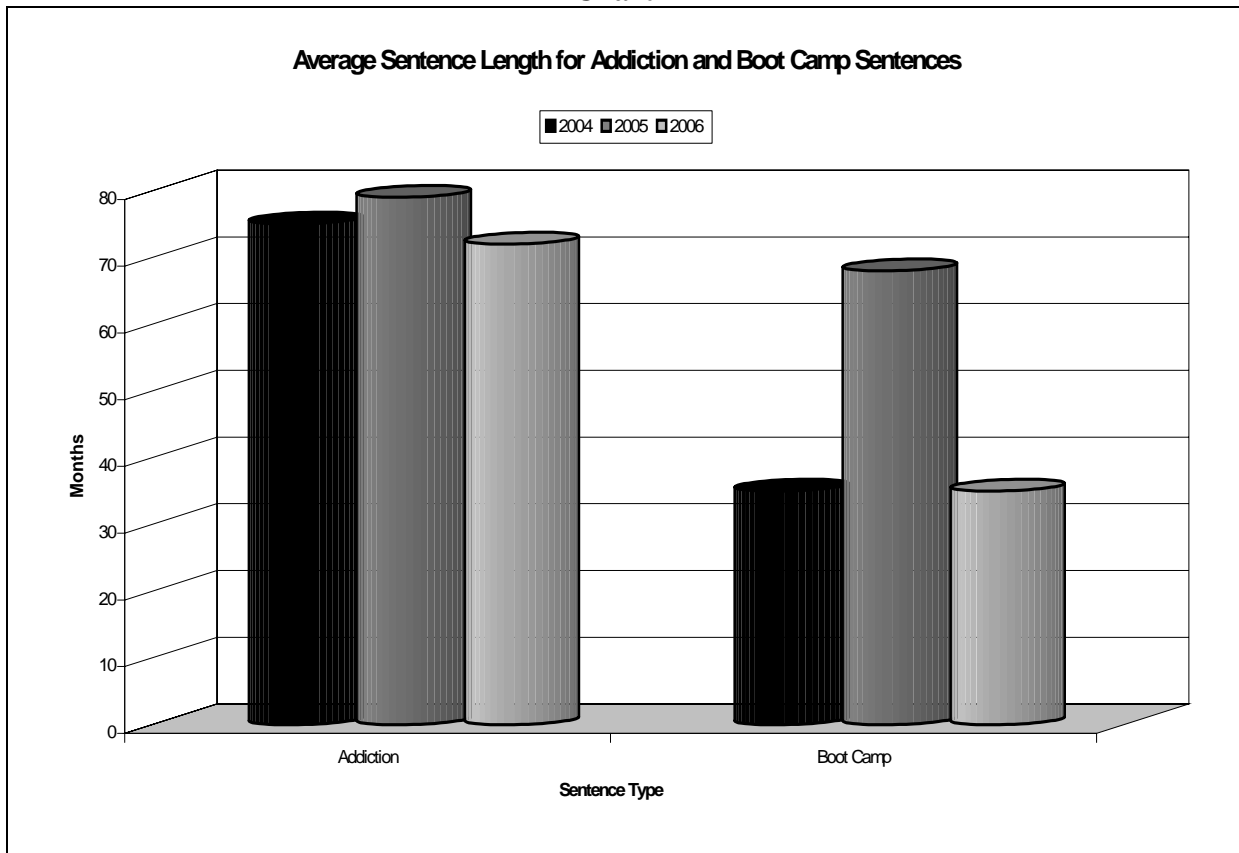
Special Level V Sentencing; Addiction and Boot Camp Sentences

“Regular” SENTAC sentencing is referred to as Truth In Sentencing (TIS). This type of sentencing involves a convicted offender being sentenced within the presumptive SENTAC sentencing ranges and serving at least 75 percent of the Level V term. Addiction sentences are Level V sentences that embrace the SENTAC principles of rehabilitation within a sentencing guideline framework. An addiction sentence allows for suspension of Level V time upon successful completion of a Department of Correction’s (DOC) treatment program. Failure to successfully complete the prison treatment program can result in the offender serving all, or a portion of the remaining Level V time from his initial sentence. Addiction sentences generally have longer Level V sentences than regular TIS sentences, but this time is suspended after the successful completion of the DOC treatment program. This longer Level V sentence provides an incentive for the offender to successfully complete the treatment program. A Boot Camp sentence often diverts the offender from a mandatory term of incarceration, for a six month Boot

Camp sentence. If an offender is diverted from a mandatory term of incarceration, but is unsuccessful in completing the Boot Camp program, that offender, by law, is to serve his mandatory term of incarceration. This is considerably different from regular addiction sentences.

The percentage of SENTAC compliant sentences that received an addiction or Boot Camp sentence remained similar across all three years. In 2004, a total of 45 (14 percent) of the 321 SENTAC compliant sentences had an addiction or Boot Camp sentence on the Felony C lead charge. Forty-three (12.5 percent) of the 342 SENTAC compliant sentences in 2005 and 37 (12 percent) of the 321 total SENTAC compliant sentences received addiction or Boot Camp sentences. As shown in Chart 1, the average suspendable Level V time for 2004 addiction sentences is 75 months, which is similar to the 79 month and 72 month averages in 2005 and 2006 respectively. Chart 1 also shows that 2004 and 2006 both had 35 month average sentence lengths for Boot Camp sentences with 2005 being significantly higher than both with a 68 month average.

Chart 1



Felony C TIS Sentencing Comparisons

In 2004 there were a total of 431 Felony C cases where a Felony C was the lead charge of the case. In 2005, the number of Felony cases increased to 436, and then in 2006 decreased to 411. The 75 percent JDI's in 2004 and 2006 are nearly consistent with the 78 percent mark in 2005.

Chart 2 shows a breakout of sentences for the lead charge Felony C's by year. Level V remains the most common sentence across all three years with the number of Jail (1 year or less) sentences being significantly more than prison (greater than 1 year) sentences. The most common non-Level V Felony C lead charge sentence is an intensive supervision Level III probation sentence. Very few offenders receive regular probation (Level II) or administrative probation (Level I). The number of individuals sentenced to prison grew slightly from 75 cases, or 17 percent in 2004 to 99, or 23 percent in 2005, and remained consistent in 2006 with 2004 at 76 cases, or 19 percent. In 2004, 201 cases, or 47 percent of Felony C lead charges were sentenced to jail. Two hundred cases, or 46 percent of Felony C lead charges were sentenced to jail in 2005 with 47 percent (188 cases) receiving jail sentences in 2006.

Chart 2

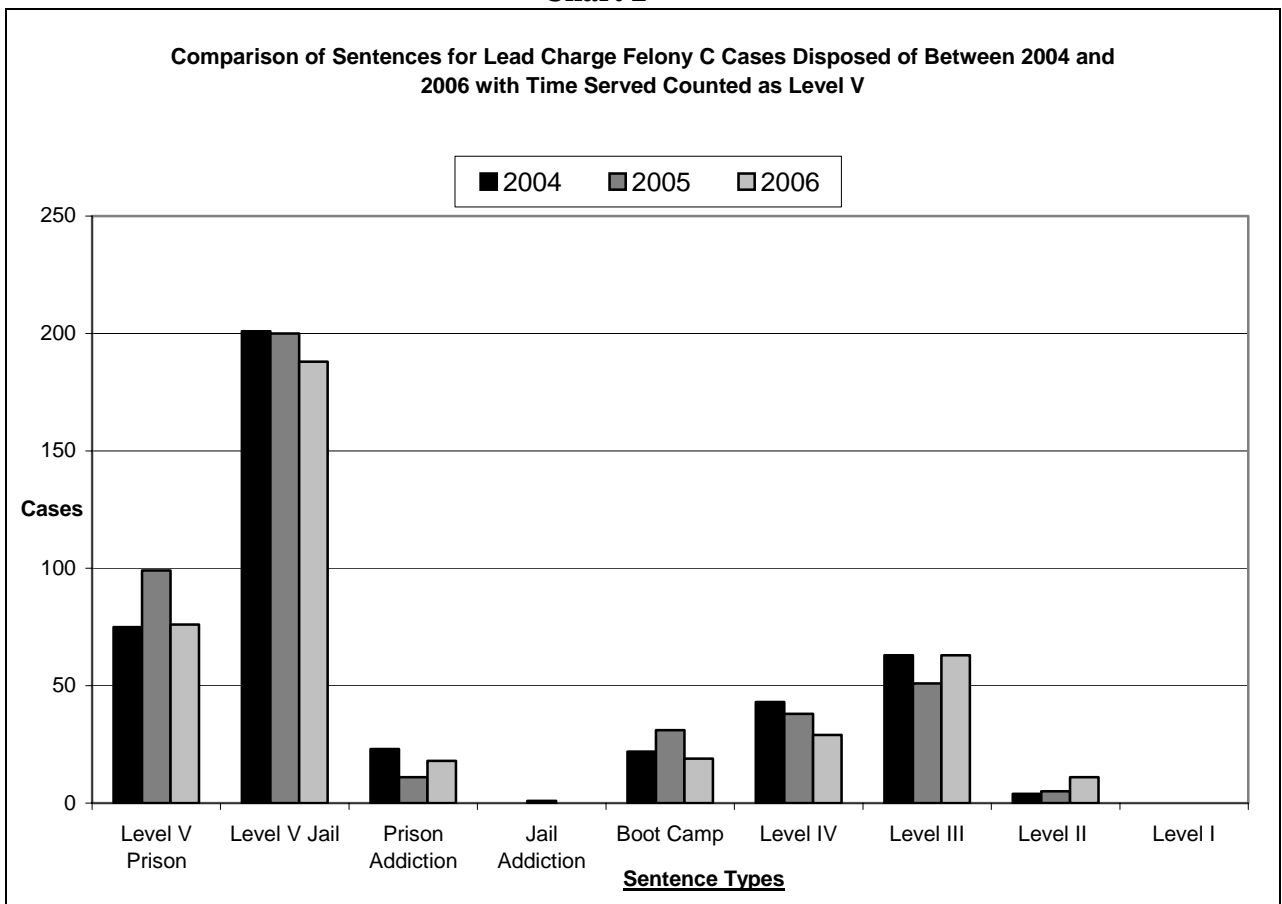
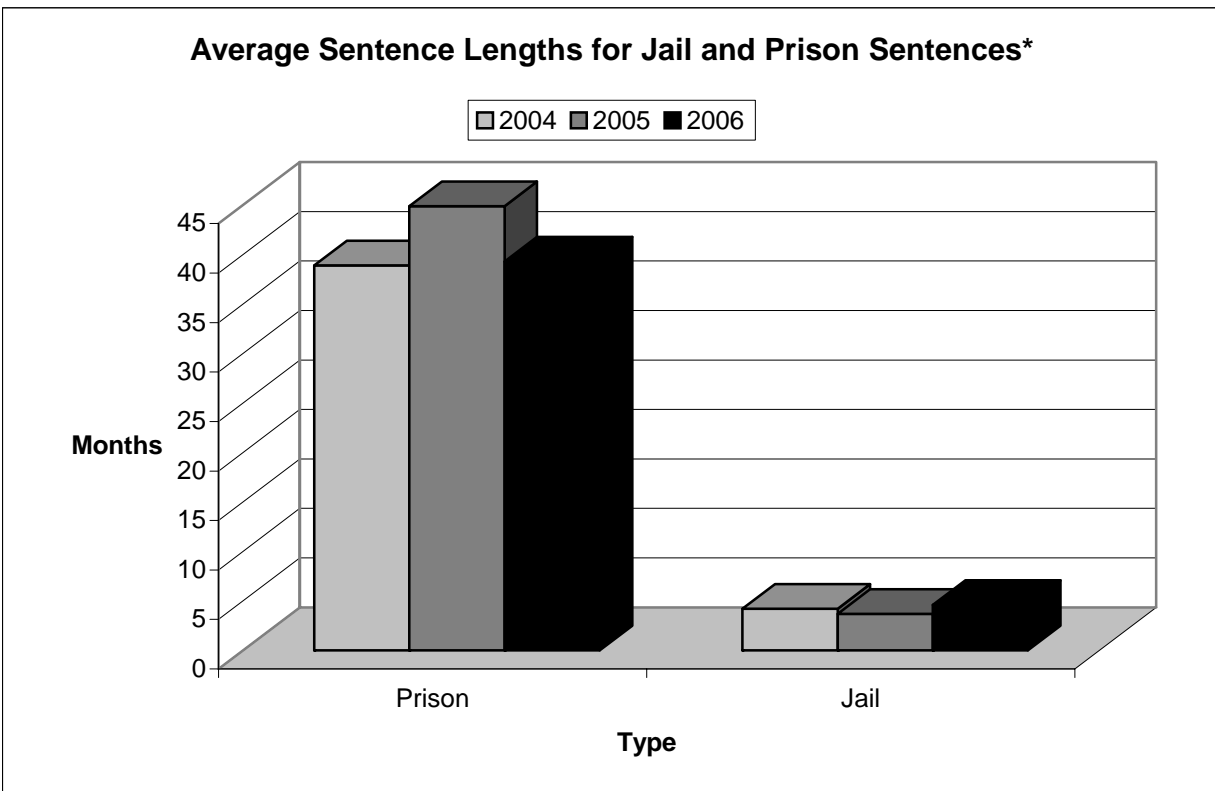


Chart 3 shows a comparison of average sentence lengths for both prison and jail sentences for 2004, 2005, and 2006. 2005 had the highest average sentence length for prison at 44.9 months. 2004 and 2006 had slightly lower average prison sentence lengths with 38.9 months 39.3 months respectively. 2006 had the highest average jail sentence length with 4.6 months. 2004 had a slightly lower average jail sentence length with 4.2 months, and 2005 was the lowest with an average of 3.7 months.

Chart 3



* Jail and Prison sentences do not include addiction or Boot Camp sentences

Findings by Type of Crime

Table 3 shows a break out of all Felony C lead charge conviction statutes by year. Title 16 § 4751 PWITD drug cases are significantly higher than any other type of case. PWITD cases are followed by 11 § 770 Rape 4th cases. Thirteen distinct statutes for Felony C lead charge convictions are represented in 2004 with 14 and 15 statutes represented in 2005 and 2006 respectively.

Table 3

<u>Felony C Lead Charge Conviction Statutes by Year</u>						
<u>Charge</u>	2004		2005		2006	
	#	%	#	%	#	%
PWITD Narcotic	348	80.7%	372	84.7%	324	78.8%
Rape 4th	52	12.1%	40	9.1%	55	13.4%
Sexual Solicitation of a Child	6	1.4%	4	0.9%	3	0.7%
Kidnapping 2nd	4	0.9%	3	0.7%	4	1.0%
Arson 1st	4	0.9%	2	0.5%	4	1.0%
Burglary 1st	4	0.9%	5	1.1%	6	1.5%
Theft >\$100,000	4	0.9%	3	0.7%	1	0.2%
Unlawful Sexual Intercourse 3rd¹	2	0.5%	1	0.2%	2	0.5%
Assault 1st²	2	0.5%	1	0.2%	2	0.5%
Health Care Fraud	2	0.5%	0	0.0%	0	0.0%
Carjack 1st	1	0.2%	1	0.2%	2	0.5%
Remove Firearm	1	0.2%	4	0.9%	3	0.7%
Exploit Resources of an Infirm Adult	0	0.0%	1	0.2%	3	0.7%
Manslaughter³	0	0.0%	1	0.2%	0	0.0%
Distribution of Narcotic to a Minor	0	0.0%	1	0.2%	1	0.2%
Purchase of a Narcotic from a Minor	0	0.0%	0	0.0%	1	0.2%
Attempted Felony C⁴	1	0.2%	0	0.0%	0	0.0%
Totals	431	100%	439	100%	411	100%
¹ Occurred prior to September 8, 1998 when this Statute was retired, but disposed of in 2004, 2005, and 2006.						
² Occurred prior to June 29, 2003 when this Statute was retired, but disposed of in 2004, 2005, and 2006.						
³ Occurred prior to June 29, 2003 when this Statute was retired, and was re-sentenced in 2005 after several mandates from Supreme Court.						
⁴ This Attempted Felony C Crime was pled from a Robbery 1st charge, but the LIO was not identified more specifically than an Attempted Felony C.						

Interestingly, of the 439 cases in 2005, 372 (84.7 percent) are Title 16 § 4751 PWITD drug cases. 2005 had a slightly higher percentage of PWITD Felony C lead charge cases than 2004 (76.9 percent). This increase could be a result of the increase of Trafficking drug weights (from 5 to 10 grams) associated with House Bill 210 (June 2003). Previous drug Trafficking cases may have become PWITD cases because of the weight increase of Trafficking charges.