



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET

April 14, 2009

TO: Judge William Carpenter, Chair SENTAC
Dave Swayze, Chair DSREC

FROM: Spencer Price, Research Specialist
John O'Connell, Director
Statistical Analysis Center

SUBJ: Update: Felony C Sentencing Patterns and
SENTAC Compliance for 2004 through 2008

Purpose and Context

The following analysis summarizes Superior Court sentencing patterns for Felony C cases with guilty dispositions for calendar years 2004 through 2008. 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 SENTAC sentencing range is 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 full 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.

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, unless there is a very 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 through 2008.

Table 1
Lead Charge Felony C SENTAC Compliance for years 2004, 2005, 2006, 2007, and 2008

Year	# Of Felony C Sentences	# of Level V Sentences	JDI	> Than 30 Month Sentence	% > Than 30 Months
2004	431	321	74.48%	40	9.28%
2005	439	342	77.90%	66	15.03%
2006	411	308	74.94%	40	9.73%
2007	521	413	79.27%	69	13.24%
2008	436	334	76.61%	66	15.14%
Totals/Avgs	2238	1718	76.76%	281	12.56%

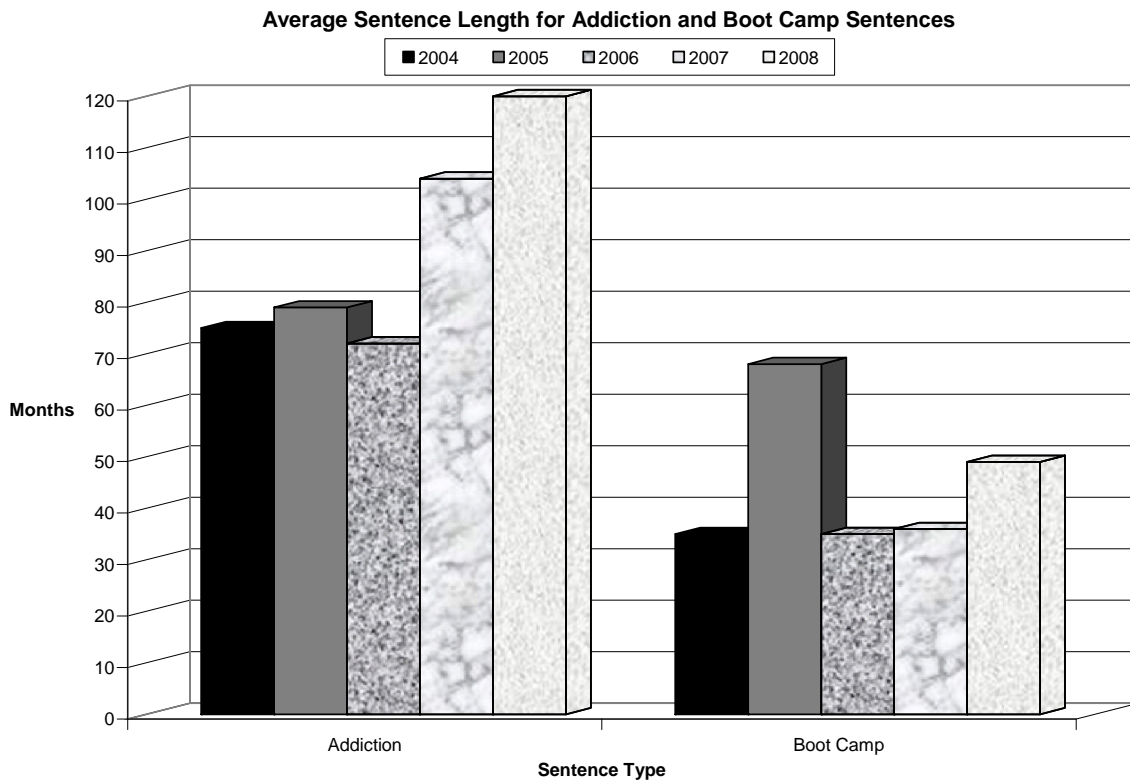
Special Level V Sentencing; Addiction and Boot Camp Sentences

“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 a number of outcomes ranging from the offender serving all or a portion of the remaining Level V time from his initial sentence to a restructuring of the sentence. 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. These provisions are considerably different from regular addiction sentences, but a trend to re-plea and resentence these mandatory Level V sentences are consistent with addiction sentences.

The percentage of SENTAC compliant sentences that received an addiction or Boot Camp sentence has ranged from a low of 23 (7 percent) in 2008 to a high of 58 (14 percent) in 2007. 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. The sentence length grew substantially in 2007 and reached a high point of 120 months in 2008. Chart 1 also shows that 2004, 2006, and 2007 had 35 to 36 month average sentence lengths for Boot Camp sentences with 2005 being significantly higher than all others with a 68-month average.

Chart1



Felony C TIS Sentencing Comparisons

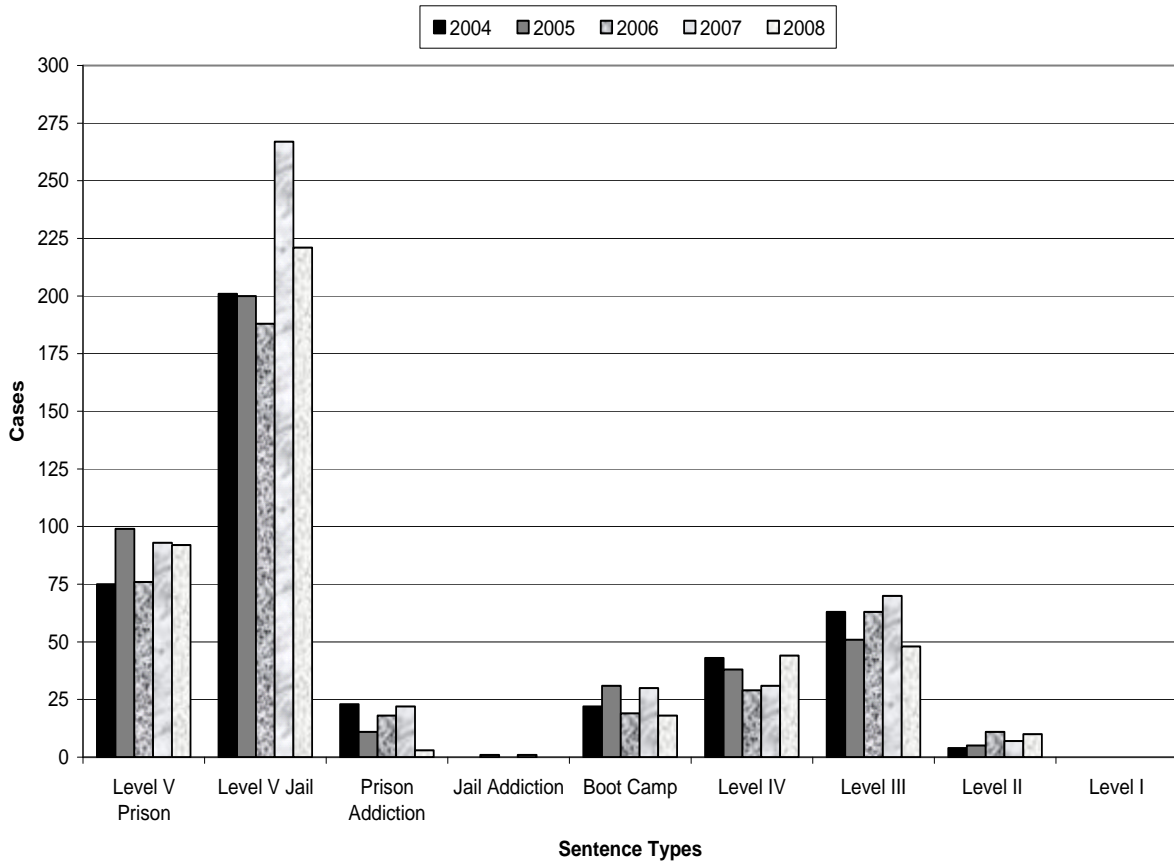
In 2004 there were a total of 431 Felony C cases where a Felony C was the lead charge of the case. The number remained nearly consistent throughout the five year analysis except for 2007. In conjunction with a spike in arrests for PWITD through calendar years 2006 and 2007 the number of Felony C cases grew to 521.

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. Similar to 2004, 2007 and 2008 had 93 (18 percent) and 92 (21 percent) cases go to Prison. 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. Jail sentences have risen in 2007 and 2008. Two hundred sixty seven cases were sentenced to jail in 2007 which was 51 percent of the total case load. In 2008, 51 percent, or 221 cases were sentenced to jail.

Chart 2

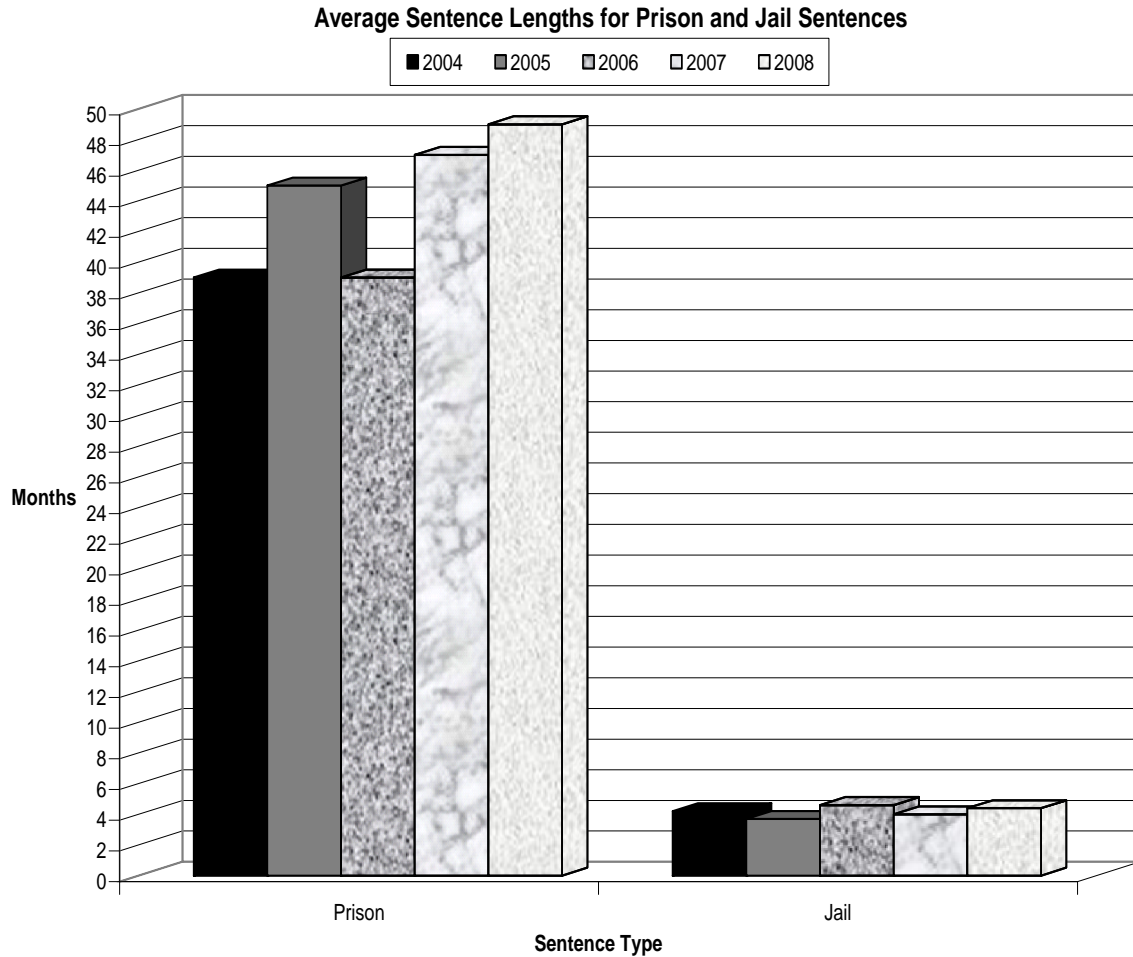
Comparison of Sentences for Lead Charge Felony C Cases Disposed of Between 2004 and 2008 with Time Served Counted as Level V



*These Sentence Types are mutually exclusive, and do not overlap with any other Sentence Type.

Chart 3 shows a comparison of average sentence lengths for both prison and jail sentences for Felony C lead charges from 2004 through 2008. The average sentence length has increased consistently from 39 months in 2006 to 47 and 49 months in 2007 and 2008 respectively. Average jail sentences have ranged from 3.7 months in 2005 to 4.6 months in 2006.

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 Possession With Intent To Deliver (PWITD) drug cases are significantly higher than any other type of case. PWITD cases are followed by 11 § 770 Rape 4th cases. 2007 had the lowest number of distinct statutes for Felony C lead charge convictions with nine and 2005 and 2006 had the highest number of distinct statutes with 14 each year.

Table 2

<u>Felony C Lead Charge Conviction Statutes by Year*</u>										
Charge	2004		2005		2006		2007		2008	
	#	%	#	%	#	%	#	%	#	%
PWITD Narcotic	348	80.7%	372	84.7%	324	78.8%	447	85.8%	362	83.03%
Rape 4th	52	12.1%	40	9.1%	55	13.4%	50	9.6%	53	12.16%
Sexual Solicitation of a Child	6	1.4%	4	0.9%	3	0.7%	6	1.2%	10	2.29%
Kidnapping 2nd	4	0.9%	3	0.7%	4	1.0%	4	0.8%	1	0.23%
Arson 1st	4	0.9%	2	0.5%	4	1.0%	2	0.4%	2	0.46%
Burglary 1st	4	0.9%	5	1.1%	6	1.5%	3	0.6%	1	0.23%
Theft >\$100,000	4	0.9%	3	0.7%	1	0.2%	4	0.8%	1	0.23%
Unlawful Sexual Intercourse 3rd¹	2	0.5%	1	0.2%	2	0.5%	0	0.0%	0	0.00%
Assault 1st²	2	0.5%	1	0.2%	2	0.5%	0	0.0%	0	0.00%
Health Care Fraud	2	0.5%	0	0.0%	0	0.0%	0	0.0%	0	0.00%
Carjack 1st	1	0.2%	1	0.2%	2	0.5%	0	0.0%	0	0.00%
Remove Firearm	1	0.2%	4	0.9%	3	0.7%	4	0.8%	0	0.00%
Exploit Resources of an Infirm Adult	0	0.0%	1	0.2%	3	0.7%	0	0.0%	1	0.23%
Manslaughter³	0	0.0%	1	0.2%	0	0.0%	0	0.0%	0	0.00%
Distribution of Narcotic to a Minor	0	0.0%	1	0.2%	1	0.2%	0	0.0%	3	0.69%
Purchase of a Narcotic from a Minor	0	0.0%	0	0.0%	1	0.2%	0	0.0%	1	0.23%
Attempted Felony C⁴	1	0.2%	0	0.0%	0	0.0%	0	0.0%	0	0.00%
Promoting Prostitution 1st	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	0.23%
Impersonating Police	0	0.0%	0	0.0%	0	0.0%	1	0.2%	0	0.00%
Totals	431	100.0%	439	100.0%	411	100.0%	521	100.0%	436	100.00%

* If a case had multiple Felony C's, the lead charge was determined by the most serious sentence.

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 resentenced in 2005 after several mandates from Supreme Court.

⁴This Attempted Felony C Crime was pled from a Robbery 1st charge, but the LIO was not identified more specifically than an Attempted Felony C.