

# First Year Assessment of the 2003 Probation Reform Law's Impact on the Administration of Justice in Delaware (Senate Bill 50 and Senate Bill 150)

January 15, 2005



## A Joint Report

*Prepared by the*  
Sentencing Accountability Commission  
Statistical Analysis Center: Office of the Budget  
Sentencing Research and Evaluation Committee

*For:*

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Honorable Nancy H. Wagner, Chair, House of Representatives Correction  
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# Table of Contents

<b>Acknowledgments.....</b>	<b>iv</b>
<b>Executive Summary.....</b>	<b>v</b>
<b>Introduction.....</b>	<b>1</b>
<b>Factors that Led to the Probation Reform Law.....</b>	<b>1</b>
Violation of Probation: Very High Volume.....	2
Did Crime Increase at the Same Rate as Violations of Probation?.....	2
Policy Changes are the Major Reason for Increased Violations.....	3
It is More Complex than Just the High Volume of Probation Cases.....	4
<b>Elements of SB50: The Probation Reform Law.....</b>	<b>6</b>
Shorter Probation Sentences.....	6
Consolidated Sentences.....	7
Department of Correction has New Authority.....	7
Level I Restitution Only.....	8
“Specified Acts Only” Probation.....	8
<b>Implementation of SB50.....</b>	<b>9</b>
Timeframe for the Probation Reform Law Impact.....	9
The Implementation of SB50 Has Been Challenging.....	11
<b>Findings .....</b>	<b>12</b>
Change in the Department of Correction Institutional Populations.....	12
No Discernable Changes in Level IV Population.....	13
Change in the Dept. of Correction Violation of Probation Populations.....	15
Compliance with the Probation Reform Law’s Sentence Limitations.....	18
Case Consolidations.....	19
The Number of Successful Probationers will Influence the Impact.....	23
<b>Conclusions and Recommendations.....</b>	<b>28</b>
<b>Appendices.....</b>	<b>29</b>

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The Delaware Sentencing Research and Evaluation Committee, under the leadership of David S. Swayze, Chair, set the direction of the report and served as first level developers and reviewers of assumptions, data and findings related to the Probation Reform Law. In addition, the Committee worked to gather and assimilate comments and input from a variety of justice system leaders to describe the progress of implementing the many changes associated with the Probation Reform Law. This system input enabled us to present research findings in a context that helps frame and understand the conclusions reached from the statistical analyses.

John P. O'Connell and Charles J. Huenke at the Statistical Analysis Center conducted the data analysis for the report. This time consuming work entailed gathering data from multiple sources to identify and track emerging trends and preliminary findings of the impact of the Probation Reform Law. John O'Connell and Beth Peyton, who serves as staff consultant to the Research Committee, developed the report narrative.

Members of the Sentencing Accountability Commission were particularly helpful in their comments and analysis of the draft report, and their insight is reflected in the final product.

It has been my pleasure to be involved in this important endeavor, both as an implementer of the Probation Reform Law, as well as a participant in understanding its current and potential impact.

We thank the crafters of the Probation Reform Law for both enacting this comprehensive reform effort and for requesting this analysis. We also would like to thank the Joint Finance Committee of the General Assembly, the Office of the Controller General and the Office of the Budget for making this analysis possible through their support of the Sentencing Research and Evaluation Committee and its work with both the Statistical Analysis Center and SENTAC. We truly look forward to continuing to shape sentencing reform in Delaware into the future.

William C. Carpenter, Jr.  
Chair  
Delaware Sentencing Accountability Commission

## EXECUTIVE SUMMARY

Senate Bill 50,<sup>1</sup> known as the Probation Reform Law, went into effect on May 31, 2003. The legislation requires that on or before January 15, 2005, the Sentencing Accountability Commission and the Statistical Analysis Center issue a report regarding the effect of the Probation Reform Law on the administration of justice in Delaware. This report is intended to fulfill that mandate, and provides:

- A summary of the factors that contributed to the development of the policy changes codified by SB50;
- A description of the many facets of SB50;
- An assessment of the implementation of SB50;
- Preliminary findings based on our relatively limited experience with SB50; and,
- Recommendations designed to further enhance the effect of this important legislation.

Prior to the implementation of SENTAC, judges were faced with limited choices about what to do with offenders. Delaware literally had a two-tier sentencing system where offenders could be sent to either incarceration, or to probation where they would receive fairly limited supervision. SENTAC turned a basically two level system into a five level system. Since the implementation of this system, a number of programs have been developed to create additional non-custodial options, provide treatment and other services for offenders at all levels, and provide supervision and accountability for all Delaware offenders.

One of the outcomes of these major reforms has been a significant increase in the number of people who violate their probation. In 1987, the year that Sentencing Accountability practices began, 195 offenders violated their probation and were sentenced to incarceration. In 2000, 4,123 offenders violated their probation and were sentenced to a Level IV or V facility.

Some of this growth was anticipated, as increased supervision in the community (Levels III and IV) was designed to hold probationers who would previously have been incarcerated more accountable. Some of the growth can also be attributed to Delaware's increased focus on treatment, since movement to more intensive treatment sometimes requires a probation violation and movement to a higher sentencing level. Some of the growth can be attributed to the substantial increase of drug arrests and substance abusing probationers. Additional growth can be attributed to special surveillance programs like Operation Safe Streets/Governor's Task Force and boot camp. The combination of increased accountability and expanded opportunities for community supervision has resulted in higher rates of violations from a larger pool of people.

Over time, as new convictions and violations have accumulated, sentencing and the administrative interpretation of those sentences has also become quite complex. If a person commits a new crime or violation, each previous sentence may be affected. This results in numerous probation sentences being violated, reimposed or modified in multiple hearings before different judges, often causing a difficult and confusing process of melding sentencing orders together to make a logical sentencing structure. Unfortunately, this also occurs in a data

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<sup>1</sup>As amended by Senate Amendment No. 3 and Senate Bill No. 150

management environment where judges may not know of all the sentences imposed by other judges or other courts.

The Probation Reform Law is designed to address some of the complexities and consequences of these sentencing reform efforts, and to make adjustments to the system. There are many aspects of this law, including:

- Probation sentences have been shortened to:
  - 2 years for any Title 11 violent felony,
  - 18-months for any Title 16 offense, and
  - 1 year for any other offense<sup>2</sup>.
- The Superior Court has been given the authority to consolidate any active probation terms from any court in any county with the current case by modifying, revoking, or terminating the pre-existing probation terms.
- The Department of Correction was given the authority to administratively resolve “technical” and “minor” violations of probation by placing an offender at Level IV Work Release or Level IV Violation of Probation Center for up to 5 days per violation, not to exceed 10 days within any calendar year.
- The Department of Correction may administratively change an offender’s SENTAC Level I, II, or III level of supervision 60 days after imposition of a sentence provided the Department uses the findings of an objective classification tool to determine the appropriate level of supervision.
- Level I – Restitution Only has been established as a new category of supervision to facilitate the collection of restitution.
- “Specified Acts Only” probation has been authorized whereby accomplishing and/or refraining from specified acts provides the court with a reason to successfully discharge offenders from their sentences.

The full impact of the Probation Reform Law will not be known for some time. Given the limits on probation terms, one would not expect to see an impact upon correctional populations directly resulting from the new law until the fall of 2004 for the shortest possible sentences. To ascertain the full impact of the Probation Reform Law, we will have to wait until offenders sentenced under the law have had an opportunity to either successfully complete their probation terms or violate their probation.

The implementation of the Probation Reform Law has also been hampered by the lack of a consistent information system throughout the courts. Sentence consolidations have proven difficult, primarily because of information systems that do not allow Superior Court to electronically access active sentences from other courts. To obtain the maximum benefit of this legislation, changes to informational systems will need to be made within the environment of the development of COTS.<sup>3</sup>

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<sup>2</sup>Exceptions to this limits can be made for sex offenders, violent offenders, and to allow for substance abuse treatment.

<sup>3</sup> The planned information system for the courts.

Recognizing we are still in the initial stages of the implementation of this legislation, we have attempted to set forth findings in this report that could be used as either baseline information for future reference or preliminary indicators as to where the Probation Reform Law might be taking us. They include:

- To date, we have not seen major changes in the Department of Correction institutional populations, or in the Level IV work release or VOP Center populations.
- The Level I-III probation population has gone down slightly since the implementation of SB50. Most of the reduction has been in Level II, with slight fluctuations or increases occurring in Level III.
- Compliance with the probation lengths specified in SB50 is high. As a result, probation terms overall are decreasing.
- Although the full capacity to consolidate cases by the Superior Court has not been realized (primarily due to issues related to information systems), we are seeing increases in the number of probation terms that are being discharged as unimproved. This pattern can be seen as a result of both consolidation and other efforts by Superior Court judges to implement the spirit of the law.

Over time, the impact of the Probation Reform Law will be driven by the rate at which people successfully complete their probations by not violating conditions or committing new offenses, and by how probation violations are handled. Preliminary results, as well as comparison populations from the last couple of years, show that many offenders violate their probations and/or commit new crimes within their first year of probation. These high rates of return to the system within a short time frame reduce the likelihood that SB50 will achieve its goals as quickly as was hoped.

Although it is too early to assess the full impact of SB50, and indeed the ramifications of this bill will unfold over several years, this report provides a preliminary examination of trends that are likely to emerge, and provides an opportunity to examine the operational challenges posed by this significant legislation.

Based on this examination, we believe that the Probation Reform Law will have a positive effect for several reasons. SB50:

- Has established realistic terms of probation, while at the same time preserving the court's ability to maintain supervision over violent offenders and offenders who commit sex crimes
- Encourages and enables treatment for addicted offenders
- Enhances our ability to collect restitution
- Provides administrative options for minor probation violations without the expense or time associated with judicial intervention
- Encourages judges, through consolidation and other sentencing practices, to organize sentences so they make more sense for individual offenders
- Reduces probation terms that were inordinately long and unduly difficult to complete successfully

- Encourages judges to discharge probations that are no longer necessary or are no longer likely to achieve a desired result.

In the long run, it is likely to cut down on both court proceedings and bed space used by technical violators.

Because it is so early in the process, our recommendations are brief.

1. Support the ability of the Sentencing Accountability Commission, the Delaware Sentencing Research and Evaluation Committee, and the Statistical Analysis Center to continue to analyze the impact of this reform effort over time. Require a supplementary report on impact and trends in January of 2007 and January of 2009. The current analysis has enabled us to uncover a number of trends that appear to be occurring in the system. A continued examination of the impact of this legislation on correctional resources, court practices, and recidivism trends are among the essential topics for future research.

2. Modify current legislation so that inconsistencies between SB50 and existing law are reconciled. Specifically, reconcile post-boot camp probation terms (Title 16 *Del. C.* §6712(d)(1)) and the first offenders' controlled substances diversion program (Title 16 *Del. C.* §4764(b)) so they are consistent with the intent of SB50 to limit probation supervision for drug offenses to 18 months.

3. Support the abilities of the courts and the Department of Correction to implement and monitor the changes brought about by the Probation Reform Bill. Any future information systems improvements must encompass and enhance the ability to implement, operationalize, and analyze SB50 changes, as well as support more efficient sentence consolidations. Without reliable and accurate data to analyze, neither the Commission, the Research Committee, nor SAC will be able to perform their responsibility of providing recommendations and comments that will enable the executive and legislative branches to draft effective future legislation.



## **INTRODUCTION**

Senate Bill No. 50,<sup>1</sup> (hereafter referred to as and used interchangeably with the “Probation Reform Law”), requires that on or before January 15, 2005, the Sentencing Accountability Commission and the Statistical Analysis Center issue a joint report to the Governor, the Controller General, and to the respective Chairs of the House and Senate Correction Committees regarding the effect the Probation Reform Law on the administration of justice in Delaware. The Probation Reform Law (the major portion of the law) passed the Legislature and was signed by the Governor on May 1, 2003. It was effective 30 days later on May 31, 2003.

This report provides a summary of the factors that contributed to the development of the policy changes codified by SB50; a description of the many facets of SB50; the status of the implementation of this statute; preliminary findings based on our relatively limited experience; and recommendations designed to further enhance the implementation of this important legislation.

## **FACTORS THAT LED TO THE PROBATION REFORM LAW**

During the late 1980’s, Delaware undertook a comprehensive sentencing and correctional reform effort. Policymakers, practitioners, and political leaders from all three branches of government worked together to create what is now known as the SENTAC system, named after the Sentencing Accountability Commission that was established to manage this effort. Prior to the implementation of SENTAC, judges were faced with limited choices about what to do with offenders. Delaware literally had a two-tier sentencing system where offenders could be sent to either incarceration<sup>2</sup>, or to probation where they would receive fairly limited supervision. At that time, researchers and policymakers determined that too high a proportion of incarcerated persons were there for non-violent offenses, and that they could safely be supervised in the community if more “alternatives to incarceration” were in place. SENTAC basically turned a two level system into a five level system.

Since the implementation of this sentencing structure, it has been expanded to include additional non-custodial options and provide treatment and related services for offenders at all levels, while at the same time providing supervision and accountability for all Delaware offenders. Today, halfway houses operate in all three counties, and Level IV options have increased by expanding home confinement with electronic monitoring and establishing two centers for individuals who violate their probations. Level III (Intensive Supervision) has expanded to a current caseload capacity of about 3,500. A large proportion of the Level III population (as well as other high-risk offenders) is also assigned to Operation Safe Streets/Governor’s Task Force, an enhanced supervision initiative whereby police and probation officer teams conduct curfew checks and

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<sup>1</sup> As amended by Senate Amendment No. 3 and Senate Bill No. 150

<sup>2</sup> While Delaware has a single or “unified” statewide correctional system, many other jurisdictions have county or city maintained jails for shorter sentences (usually less than one year), and state facilities for sentences over one year. It has been the practice in these types of reports to use the terms “jail” and “prison” to allow for a better comparison with other jurisdictions. As such, when the term jail is used in this report, it generally refers to a period of incarceration of a year or less and prison refers to incarceration greater than a year.

additional activities in high-risk areas. In addition, substance abuse treatment for offenders in Delaware expanded dramatically since the inception of SENTAC, with almost 1,000 treatment beds at Level IV and Level V, and additional services available in the community. Additional programs, such as drug court, TASC, boot camp, and others have developed to enhance supervision and services for targeted populations.

#### VIOLATION OF PROBATION: VERY HIGH VOLUME

One of the outcomes of these major reforms has been a significant increase in the number of people who violate their probation. In 1987, the year that Sentencing Accountability practices began, 195 offenders violated their probation and were sentenced to incarceration as a result of that violation (137 for jail for terms of one year or less and 58 offenders for a prison term of greater than one year).

In 2000,<sup>3</sup> 4,123 offenders violated their probation and were sentenced to either Level V incarceration; a Level IV term but were held at a correctional facility until an opening occurred in that Level IV program; or to a work release or violation of probation center. Of these probation violators, 3,157 were sentenced to a jail term of less than one year and 966 were sentenced to a prison term of greater than one year.

These probation violations were the result of the defendant committing a new crime, committing a technical violation (e.g., missing curfew, failing to participate in treatment, prohibited victim contact) or both. Some of this growth was anticipated, as increased supervision in the community (Levels III and IV) was designed to hold probationers who would previously have been incarcerated more accountable. Some of the growth can also be attributed to Delaware's increased focus on treatment, which required more intensive supervision, which increased the possibility of a probation violation and movement to a higher sentencing level upon conviction. In many instances, a violation and level change must take place to move an offender into more intensive treatment. Some of the growth can be attributed to the substantial increase of drug arrests and substance abusing probationers. In addition, under the new sentencing structure, almost all offenders receive a probation term following a jail or prison sentence. The combination of increased accountability and expanded community supervision has resulted in higher rates of violations from a larger pool of people.

#### DID CRIME INCREASE AT THE SAME RATE AS VIOLATIONS OF PROBATION?

As described above, the number of probation violators (both jail and prison sentences) increased from 195 to 4,123: an increase of over 1,900 percent.

During the same time period, Part I reported offenses<sup>4</sup> increased from 32,436 (1987) to 35,683 (2000): an increase of 10 percent. Even if the peak year of 1997 is used for Part I crime when the count was 43,051, the percentage increase for serious violent and property crime was only 32

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<sup>3</sup> The most recent year that data are available.

<sup>4</sup> Uniform Crime Report Part I reported offenses include: homicide, rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft and arson.

percent. While this was a significant increase in crime, it does not explain the very large increase in probation violators being admitted to jail and prison.

Illicit drug offenses increased even faster than Part I crime as a number of policy and enforcement initiatives were developed to apprehend and punish offenders in possession of or selling illicit drugs. Drug crimes increased 206 percent between 1988 and 2000: from 3,439 to 10,522.<sup>5</sup> Some of these drug offenders were on probation and were violated as a result of the new drug arrests, and others, with less criminal history, were sentenced to probationary terms. Yet, once on probation, addicted drug offenders were at substantial risk of being violated as a result of a positive drug test or failure to comply with treatment, as they experienced frequent relapses to drug use.

#### POLICY CHANGES ARE THE MAJOR REASON FOR INCREASED VIOLATIONS OF PROBATION

As mentioned above, in 1987 prior to the implementation of structured sentencing under the Sentencing Accountability Commission (SENTAC), very few offenders had their probations revoked and were sentenced to incarceration. As SENTAC was implemented, the number of offenders violated and sentenced to incarceration increased from about 195 per year to about 2,000. Part of the reason for this increase was the implementation of Level III and IV supervision levels, which included a significant increase in supervision compared with the old “standard” probation. These additional levels of supervision were designed for offenders who previously would have received sentences to jail or prison, but because of the nature of their cases or their criminal histories it was felt they could safely be placed in the community with additional probationary oversight. These levels also were to serve as transitional stages for offenders released from jail or prison in order to provide assistance as they readjusted to the community. In other words, they were intended to provide a “short leash,” and as such, contributed to increases in violations.

However, the implementation of SENTAC cannot explain the full increase of offenders being violated from probation to incarceration. Starting in the mid-1990s, as an effort to increase public safety (particularly in the City of Wilmington), programs that enhanced punishment for what heretofore were described as “technical probation violations” were implemented. For example, Operation Safe Streets and the Governor’s Task Force (OSS) raised a curfew violation for Level III probationers from a mere “technical violation” to a breach that swiftly resulted in detention and a violation. As OSS was implemented between 1997 and 1999, probation violation admissions to Levels IV and V increased by 33 percent from 2,270 to about 3,600.<sup>6</sup>

Likewise, drug courts require a strict compliance with “staying on program.” This includes showing up for all of the scheduled drug counseling sessions and staying drug free. Positive drug tests and not attending meetings were no longer just a technical violation for a drug court client. Repeat violations of these conditions of probation often lead to a jail term. In addition, increasing treatment intensity (for example, moving from an outpatient to a residential program)

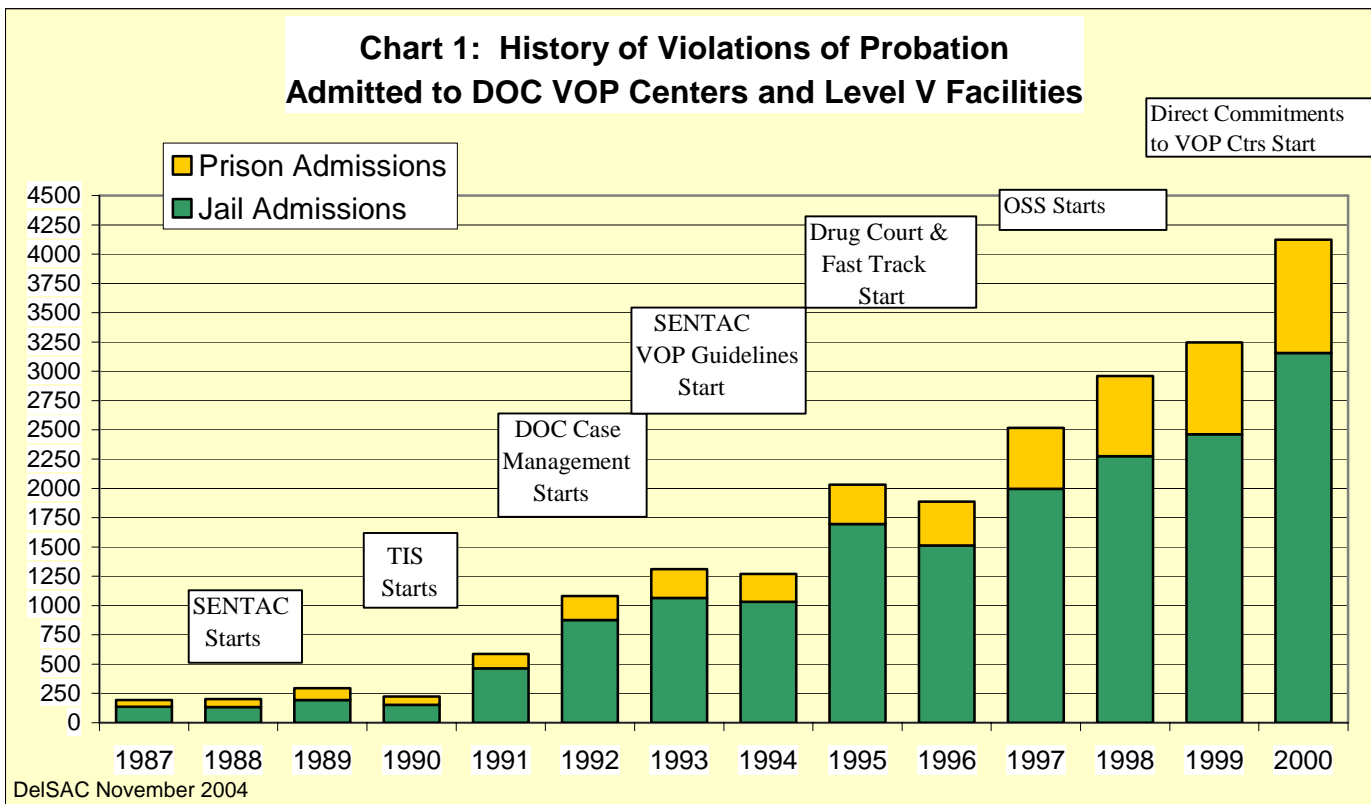
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<sup>5</sup> Statistical Analysis Center, Office of the Budget (1998). *Crime in Delaware, 1987*. Dover, DE, and Statistical Analysis Center, Office of the Budget (January 2004). *Crime in Delaware, 2002*. Dover, DE.

<sup>6</sup> Delaware Sentencing Research and Evaluation Committee (2004). *Operation Safe Streets/Governor’s Task Force: Review and Impact*. Dover, DE.

often required the defendant to be housed at higher supervision levels, and violating a defendant's probation became a means to accomplish that result. In other words, the configuration of Delaware's correctional and community-based treatment often required offenders' probations to be violated in order for them to obtain the necessary drug treatment.<sup>7</sup>

As Chart 1, *History of Violation of Probations Admitted to DOC VOP Centers and Level V Facilities*, shows, commensurate with policy changes such as SENTAC, drug court, Fast Track, Operation Safe Streets and the opening of Violation of Probation Centers, there was an increase in the number of probation violations resulting in incarceration. In the year 2000, the annual count for admissions to Level V and Level IV VOP Centers had reached 4,000, nearly a 2,000 percent increase than before the first policies of tougher accountability on the streets began.



**IT IS MORE COMPLEX THAN JUST THE HIGH VOLUME OF VIOLATION OF PROBATION CASES:**

The very high volume of violation of probation cases doesn't just impact Department of Correction beds and community supervision workloads. This extremely high volume also affects the way Superior Court cases are handled. The Court's information systems are case driven – that is, they record how a particular case is prosecuted and what ultimately occurs with those particular charges. As a result, it is extremely difficult and costly to pull together all the cases

<sup>7</sup> For a more comprehensive discussion of these issues, see *Correctional Treatment in Delaware: Strategies for Success*, DSREC and SENTAC, 2004.

that may have involved a particular individual so that a sentence can be developed that is relevant to the overall treatment of that individual.

To help describe the complexity that the high volume of violation of probation cases has on the courts and DOC processes, as well as to determine the impact this complexity has on individuals in the system, about twenty “average” cases sentenced in Superior Court were randomly selected for review. From this group, several cases were then analyzed using the full Superior Court sentencing history, the arrest history of the defendant, and the record of the Department of Correction concerning the admissions and movement of that individual. From this review, two cases were developed which are included in Appendix B. These cases are representative of the typical patterns of activity we see in most cases that involve multiple sentencing events. The discussion that follows is based on this analysis.

When examining these typical cases, several things become apparent.

- Multiple Violations of Probation are Common in a Single Case. Once convicted in Superior Court, it is very common to be later convicted of violating probation in that case multiple times. We found as many as 11 violations associated with a single conviction. This serial approach of administering justice is aggravated by the practice of including multiple charges in each conviction. It is not uncommon in violation of probation hearings to use only one of the many charges for the “updated” sentencing event with the sentence in the other counts remaining as previously sentenced. The end result over time is that to follow up on a single conviction and the probation violation history, multiple sentencing orders must be reviewed.
- “Sentencing Schemes” are Complex. Delaware sentencing often times includes more than one criminal charge in a case and each charge carries its own sentence. Taken together, the sentencing scheme for that case can be very complex. For instance, in one of our illustrative cases in Appendix B, the offender had his 102-month Level V term suspended for 42 months mandatory time (no good or merit time reductions) to be followed by 18 months Level IV treatment (Crest) to be followed by 12 months Level III and 60 months at Level II. As sentences for VOP in a case are combined into the original sentencing scheme, the sequence of ordered events can become very complex. Subsequent violation events, particularly in different courts, can further complicate things and result in an inconsistent sentence to address the needs of that particular defendant.
- Re-sentencing on Violations of Probation Often Extends the Sentence Beyond that Originally Intended. Sometimes the violations and re-sentencings for a single case extend beyond the unsuspended Level V time initially given in the original sentence. For instance, in one of our cases, the offender was sentenced to combined Level V term of 4 years (based on four separate Level V one year sentences in a case suspended for four separate Level III sentences). As a result of a series of probation violations at different points in the supervision, six years

later, this individual was still being re-sentenced for new violations. This practice results in what is, in effect, “perpetual probation.”

- Multiple Drug Treatment Ordered on Violations of Probation. Imbedded within the violations of probation is frequent sentencing to drug treatment. One of the cases reviewed received conditions for Crest (IV), then Key (V), then Aftercare (III), then Key to be followed by Crest (V and IV) as part of a series of violations of probation for a single case. Another offender received Key (V) for one violation of probation in one case, Crest (Level IV) for a violation of probation in another case, and later Key (V) in a subsequent case. Unfortunately, the lack of information regarding criminal history in previous sentences many times will affect the ability of an offender to move through the treatment continuum in a logical fashion. In addition, as discussed in *Correctional Treatment in Delaware: Strategies for Success* (2004), sentencing levels often determine the availability of treatment an offender is eligible to receive. Some offenders will be sentenced to a higher level of supervision to ensure the availability of that needed treatment, and additional adjustments may be made if ordered services are not available or attained.
- Unimproved Discharging. When there are multiple violations of an individual’s probation who is serving probation as a result of multiple sentencing orders, over time a “cleaning up” process occurs by the court in an effort to simplify the complex sentencing scheme that has developed. This occurs by the court discharging as unimproved some of the probation sentences and imposing a new sentence on those counts that remain. This “cleaning up” process was the precursor to the consolidation concept found in SB50.

## **ELEMENTS OF SB50: THE PROBATION REFORM LAW**

There are many aspects of the Probation Reform Law. This section is intended to summarize the major components of the law and to clarify the system’s understanding of its intent.

### **SHORTER PROBATION SENTENCES**

One of the primary purposes of this law is to shorten probation terms with the expectation that the number of persons on probation and subsequently the number of violations of probation that lead to incarcerations in jail and prison will be also be reduced. As such this law limits probation terms to:

- (1) 2 years for any violent felony listed in Title 11 *Del. C.* §4201,
- (2) 18 months for any Title 16 drug offense, and
- (3) 1 year for any other offense.

These limits for probation terms do not apply to sex offenses defined in Title 11 *Del. C.* §761, and any violent felony defined in Title 11 *Del. C.* §4201 can be excluded by the sentencing court determining that a longer period of probation will reduce the likelihood that the offender will

commit another violent offense, thus enhancing public safety. In addition, the statute allows for the extension of a probation term by up to 90 days per incident where the offender has not completed the court ordered substance abuse treatment.

The criminal justice community agreed that these limits on probation terms apply to all new crimes or all violations of probation that have occurred since the enactment of the legislation, and that all probation terms would be served concurrently. However, as Senate Bill 150 clarifies, a defendant who commits crimes while serving a probation sentence will not be subject to the requirement that probation sentences in excess of the new limits be served concurrently.

#### CONSOLIDATED SENTENCES

To ensure an even more effective application of the intent of the law, The Probation Reform Law provides authority to the Superior Court to consolidate any active probation terms from any court in any county with the current case by modifying, revoking or terminating the pre-existing probation terms.

It is not uncommon for an offender to have multiple active sentences involving different judges from different courts and/or from different counties. The consolidation of active cases could significantly reduce the number of cases the Department of Correction's Bureau of Community Corrections has to interpret and would result in better coordination of supervision.

The Probation Reform Law consolidation could also reduce the number of sentences "running" consecutively. It was frequently the practice for pre- Probation Reform Law sentencing orders to stipulate that probation terms in a current sentencing order were to be served consecutively with all other active probation terms. Consolidating "consecutive" probation terms could significantly shorten the length of stay on probation when the "total" set of active probation terms is brought into compliance with the 2 year, 18 month and 12 month probation limits specified by the Probation Reform Law.

The practice of sentence consolidations on an ongoing basis would gradually reduce the complexity surrounding multiple active and sometimes conflicting sentencing orders. Also, as time goes on, later consolidations should be much easier to conduct since only the immediate preceding sentencing order and the new sentence would need to be addressed.

#### DEPARTMENT OF CORRECTION HAS NEW AUTHORITY REGARDING LEVEL IV VOP CENTER AND PROBATION PLACEMENT

Two other measures are provided by The Probation Reform Law to help reduce the number of violations of probation that lead to admission to jail or prison incarceration. The Department of Correction is authorized to administratively resolve "technical" and "minor" violations of probation (i.e., violations not involving new arrests or convictions) by placing the offender at Level IV Work Release or Level IV Violation of Probation Center for up to 5 days per violation, not to exceed 10 days within any calendar year.

The second measure authorizes the Department of Correction to administratively change an offender's SENTAC Level I, II or III level of supervision 60 days after imposition of the sentence provided the Department uses the findings of an objective classification tool to determine the appropriate level of supervision.

Both of these measures have the potential of reducing the number of offenders being incarcerated for a violation of probation. The use of short-term Department of Correction administrative Level IV stays provides an effective intervening step short of incarceration for many probation violators. Likewise, DOC reports that it believes after the initial 60 days of the court issued probation sentence, the Level of Services Index – Revised (LSI-R: the risk assessment tool DOC chose for the objective classification) will produce “risk scores” that will allow for more probationers to be moved down from Level III to Level II and will more adequately represent the appropriate level of supervision needed to monitor that defendant.<sup>8</sup> Over time, this should lead to more offenders on Level II, resulting in a freeing up of Level III probation officers to allow them to better supervise the probation population that is at the greatest risk of violating.

#### LEVEL I RESTITUTION ONLY

While the Probation Reform Law intends to reduce the number of probationers on community supervision and in our correctional facilities, it is not intended that the accountability of offenders that owe restitution be reduced. As such, the term of probation for any restitution is the period of time it takes the offender to pay off his debt. To facilitate the collection of restitution, but not so as to overburden the Department of Correction, the sentencing court may impose a Level I – Restitution Only sanction. Unless there are other active criminal sentences, the Level I – Restitution Only cases are carried on Level I caseloads, and the sentencing judge is notified periodically of the status of payment. If a defendant fails to maintain the schedule of payments, they can be scheduled for a violation of probation hearing to modify the conditions or be placed on a contempt calendar by the court.

#### “SPECIFIED ACTS ONLY” PROBATION

Another way the Probation Reform Law attempted to reduce the number of individuals serving probation sentences was by allowing for “specified acts only” probation. The idea for specified acts only probation is that the court orders the offender to engage in specific conduct within a specified time frame – such as completing a G.E.D., maintaining full time employment or school attendance, successfully completing an anger management course – without serving time in jail or serving a specific term of probation. Accomplishing and/or refraining from specified acts would provide the court with reason to successfully discharge the offender from the sentence.

Specified acts probation accompanied by a probation term is nothing new to judicial sentencing. However, the specified acts probation provision eliminates the time limitations set for in SB50, and violations are prosecuted as misdemeanor criminal contempt (Title 11 *Del. C.* §1271) where there was no supervision ordered.

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<sup>8</sup> As noted in the synopsis to SB50, in Delaware over 38 percent of the probation population is under intensive supervision, as compared with 3 percent nationally.



## BOOT CAMP/DIVERSION CONFLICT

The Probation Reform Law did not specifically address how the probation limitation for drug offenses (Title 16) would affect the 30-month post boot camp probation terms (Title 16 *Del. C.* §6712(d)(1). Some judges have reduced the intensive post boot camp probation supervision to 18 months so as to be in compliance with SB50, but it is not clear that this was intended by the statute. The Probation Reform Law also appears to be inconsistent with the 36-month probation related to the first time offenders controlled substances diversion program found in Title 16 *Del. C.* §4764(b). Both matters should be addressed in future legislation.

## IMPLEMENTATION OF SB50

### TIMEFRAME FOR THE PROBATION REFORM LAW IMPACT

Because of the parameters of the probation term limits established in the Probation Reform Law (SB50), one would not expect to see an impact directly resulting from the new law until at least the fall of 2004. For instance, assuming a probationer receives the maximum term allowed under SB50, persons sentenced for non-violent offenses (a probation term limited to a maximum of 1 year) would not successfully complete their SB50 probation terms until October to December 2004. Those serving SB50 sentences for drugs would not successfully complete their probation terms until spring of 2005. Those sentenced to the maximum 24-month SB50 probation terms for violent offenses would not be completing their probation until October to December 2005. In addition, those offenders who must serve a Level IV or Level V sentence before they are released to “street probation” will not complete their SB50 probation term in many cases for years to come. Chart 4, entitled *The Sequence of the Phase-In for Senate Bill 50 for Third Quarter 2003 Cases*, indicates this impact.

Therefore, the more detailed findings in this report are either baseline information for future reference or the most preliminary results indicating where the Probation Reform Law may be taking us. Clearly, a fuller and more useful understanding of the impacts of the Probation Reform Law is some years in the future.

For instance, Chart 2, *The Sequence of the Phase-In for Senate Bill 50*, shows that by next year we will have our first information about the possibility of reduced recidivism for non-violent offenders that were sentenced directly to probation in the latter part of 2003. That is, we will be able to assess whether recidivism (measured as one full year past the SB50 term) is significantly lower than for similar persons for non-violent offenses sentenced directly to probation under the old system in 2002.

As time goes on and the SB50 experience has had a chance to be fully realized, we will begin to see recidivism comparisons for drug offenders sentenced to probation in the summer of 2006, and if the drug offenders received a 90-day probation extension, we can expect to see comparative recidivism results in fall of 2006. Likewise, for violent offenders that served a one-year jail term prior to release to a SB50 two-year probation term, we will begin to see comparative recidivism results beginning in the spring of 2008.

## Chart 2

### The Sequence of the Phase-In for Senate Bill 50 For Third Quarter 2003 Cases -- By Type of Sentence

Direct SB50	Direct SB50	Direct SB50	Direct SB50	LIV 6MO	Jail (1 YR)	Jail (1 YR)	Prison( 2 YR)	Prison( 2 YR)
Non-Violent	Drug	Drug+ 90Days	Violent	Drug	Non-Violent	Violent	Non-Violent	Violent
Probation	Probation	Probation	Probation	Probation	Probation	Probation	Probation	Probation

#### Initial SB 50 Cases -- Summer 2003

July-Sept. 2003									
Oct-Dec. 2003	SB 50				Level IV	Level V	Level V		
Jan- Mar. 2004	Probation	SB 50							
April-June 2004		Probation	SB 50	SB 50			Level V	Level V	
July-Sept. 2004			Probation	Probation			Level IV		
Fall 2004 Monitoring									
Oct-Dec. 2004						SB 50			
Jan-Mar. 2005	First Year				SB 50	Probation			
April-June 2005	Recidivism				Probation				
July-Sept. 2005		First Year						Level IV	
Oct-Dec. 2005		Recidivism	First Year			First Year	SB 50		
Jan- Mar. 2006	Second		Recidivism	First Year	First Year	Recidivism	Probation		
April-June 2006	Year		Recidivism	Recidivism	Recidivism			SB 50	
July-Sept. 2006	Recidivism	Second						Probation	
Oct-Dec. 2006		Year	Second			Second		SB 50	
Jan- Mar. 2007	Third	Recidivism	Year	Second	Second	Year		Probation	
April-June 2007	Year		Recidivism	Year	Year	Recidivism	First Year	First Year	
July-Sept. 2007	Recidivism	Third		Recidivism	Recidivism		Recidivism	Recidivism	
Oct-Dec. 2007		Year	Third			Third			
Jan- Mar. 2008		Recidivism	Year	Third	Third	Year			
April-June 2008			Recidivism	Year	Year	Recidivism	Second	Second	
July-Sept. 2008				Recidivism	Recidivism		Year	Year	
Oct-Dec. 2008							Recidivism	Recidivism	
Jan- Mar. 2009									
April-June 2009							Third	Third	
July-Sept. 2009							Year	Year	
Oct-Dec. 2009							Recidivism	Recidivism	
Jan- Mar. 2010	DeISAC October 2004								
April-June 2010								Third	
July-Sept. 2010								Year	
Oct-Dec. 2010								Recidivism	

## THE IMPLEMENTATION OF SB50 HAS BEEN CHALLENGING

In an effort to assess perceptions and progress, David S. Swayze, Chair of the Delaware Sentencing Research and Evaluation Committee, sent letters to the chief judges of all Delaware trial courts, the Attorney General, Public Defender, and Department of Correction requesting information related to the impact and implementation of SB50. Responses to these letters were helpful in understanding the context of the statistical findings that emerged. The discussion below is based on the input received by those surveyed.

A number of activities have taken place to implement SB50, including:

- Training and policy development is occurring system-wide.
- New probation procedures were written and put into place by the Department of Correction in July 2004.
- “Administrative” violators from New Castle County began routinely being moved to the Sussex VOP center beginning in the summer of 2004 so now probation officers in all three counties have direct access to this option.
- Level I Restitution Only cases were added as a separate probation category in the summer of 2003.
- Probation staff was trained in the use of the LSI-R risk assessment instrument in the spring of 2003, and the DOC reports that work is ongoing to optimally implement this risk assessment process.
- In Superior Court, meetings have been ongoing to develop policies and procedures related to SB50, and a detailed set of protocols was prepared earlier this year. An administrative directive was recently issued by President Judge Vaughn putting these policies and procedures in place subject to modification based on experience with their implementation.
- Training and policy changes have also occurred in both the Attorney General and Public Defender offices to ensure compliance with SB50 parameters.

Case consolidation in Superior Court is also occurring, although it continues to be a confusing and complex process. This has reportedly had implications for other courts, particularly when there is a lack of clarity regarding financial obligations that are either continued or dismissed when a case is closed. Protocols in Superior Court do not require consolidation on a new conviction, but are permissive, and sentences may be consolidated by a motion or upon the initiative of the sentencing judge. Many of these issues should be resolved via the Superior Court administrative directive and the ongoing dialogue that is expected to continue.

The Justice of the Peace Court and the Court of Common Pleas report that they have received notice that some of their cases have been dismissed due to consolidation but they have not been inundated. While jail or prison bed savings may outweigh this issue, there has been some concern raised about the dismissal of Court of Common Pleas cases’ financial obligations, particularly since CCP has a highly successful collection procedure unique to the type of offenses handled by that court. This process is not easily transferable to felony level matters.

The major obstacles impeding case consolidations are related to information systems. Within Superior Court, judges have access to sentencing orders imposed by other Superior Court judges, and can retrieve this information electronically statewide. However, consolidated orders must be done within the Automated Sentencing Order Program (ASOP), and programming to handle consolidated orders has only recently been implemented. Information for cases from other courts is not available electronically, so many times judges do not know at sentencing the status of these outstanding cases, or even of their existence. When probation officers have information from other courts' sentences, consolidation can be done effectively. But this hodgepodge of information is not conducive to full implementation of this statute.

In addition, the lack of a unified information system requires manual notification (generally faxed copies of new orders) to be sent to other courts, and those courts have to modify or remove their sentences manually from their electronic databases. According to Superior Court, cases cannot be consolidated when there is an outstanding Capias from another court or from a different county within Superior Court. In addition, DOC's information system was not programmed to accommodate SB50 changes, although these changes are now being made.

## FINDINGS<sup>9</sup>

### CHANGE IN THE DEPARTMENT OF CORRECTION INSTITUTIONAL POPULATIONS

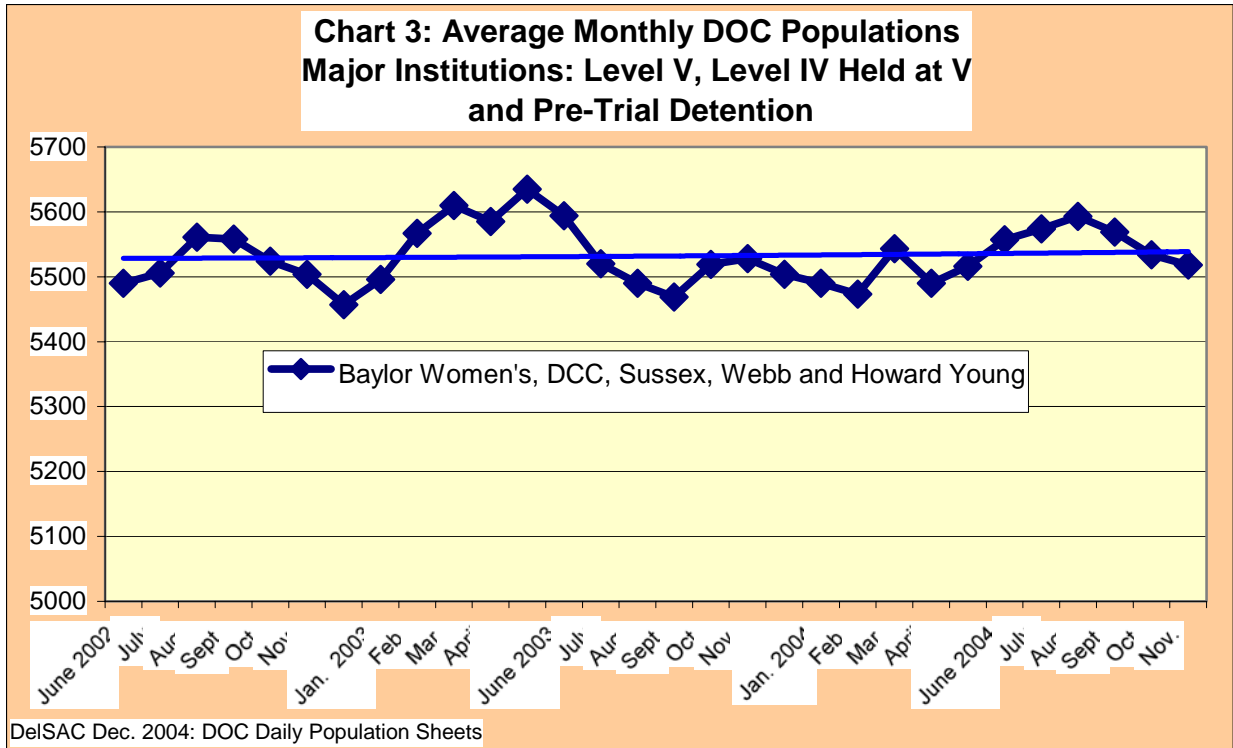
The population in the major institutions has remained relatively stable since the implementation of SB50. As would be expected according to the phase-in schedule for the Probation Reform Law (SB50) discussed above, no dramatic changes specifically related to the new law can be demonstrated to have affected the Department of Correction institutional populations. Chart 3, *Average Monthly DOC Populations: Major Institutions*, which depicts the major institutional population pre- and post-June 2003, shows no discernable downward trend. In fact, between 2002 and 2004, there is, as designated by the superimposed trend line, a very small increasing trend in the population. For planning purposes the major institution population counts, while exhibiting some monthly variance, are stable.

The major DOC institutions include the Baylor Women's Correctional Institution, the Delaware Correctional Center, Sussex Correctional Facility, Howard Young and Webb Correctional Facility. The population counts shown in Chart 3 include Level V (prisoners with sentences greater than one year and those with jail terms of one year or less), Level IV offenders being held at Level V until space becomes available, and pre-trial detainees.<sup>10</sup>

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<sup>9</sup> The data sources that were used in this study include the DOC daily population count sheets, the DOC Probation/Parole Monthly Reports, the SAC data base of Superior Court sentencing orders including a sample of all Superior Court sentences in September 2003 and September 2004, and the Deljis criminal history files.

<sup>10</sup> Only the aggregate institutional count is shown here. The most recent information showing major institutional population detailed breakdowns is for the year 2000 as appears in the 2000 Delaware Department of Correction Incarceration Fact Book, January 2004.



**NO DISCERNABLE CHANGES IN LEVEL IV POPULATIONS**

In spite of changes that should impact Level IV populations, they too appear to be stable. Level IV quasi-incarceration facilities include the Work Release facilities (Plummer Community Correction Center, Sussex Halfway House, and Morris Community Correction Center) and the Level IV Violation of Probation Centers located at the Delaware Correctional Center and the Sussex Correctional Center. Like the major incarceration institutions, there does not seem to be any major change in the Level IV quasi-incarceration population, as shown in Chart 4, *Average Monthly DOC Populations: Level IV Quasi-Incarceration*.

This appearance of stable Level IV populations, at least for the Work Release and Violation of Probation Centers, is somewhat misleading because unlike major institutions or probation, Level IV is limited to the of number beds. Hence, when these Level IV facilities are full, other offenders who are scheduled will be further backed up at Level V or Level III.

While there should not be any direct impact from shorter probation lengths established by the Probation Reform Law, there are other parts of SB50 that could conceivably have an impact on the Level IV populations. Several criminal justice system leaders reported that they had anticipated Level IV populations to increase, and as mentioned in the Superior Court’s letter to the Sentencing Research and Evaluation Committee, some judges have reportedly used Level IV sentences as a means of increasing supervision that has been limited by SB50, particularly if they believe the probation term will not allow sufficient time to address the needs of the defendant or the victim.

Because of a reported shortage of Level IV beds and program “slots”, there is a perception that more offenders may be remaining longer at Level V awaiting transfer to Level IV. This cannot be verified using available DOC admission data, yet the major institutions’ pre-post population counts shown in Chart 5, which includes the sub population of Level IVs held at Level V, does not indicate that a significant issue has arisen. Given existing data, we cannot yet find a Level IV “bubble.”

The Probation Reform Law also provides the Department of Correction new authority to administratively resolve “technical” and “minor violations” of probation (i.e., violations not involving new arrests or convictions) by placing the offender at Level IV Work Release or Level IV Violation of Probation Center for up to 5 days per violation not to exceed 10 days within any calendar year (§5d). The DOC reports that as of November 2004, about half of the offenders at SVOP (Sussex Violation of Probation Center) are at the facility as a result of a sanction imposed by a probation officer for a technical violation of probation.

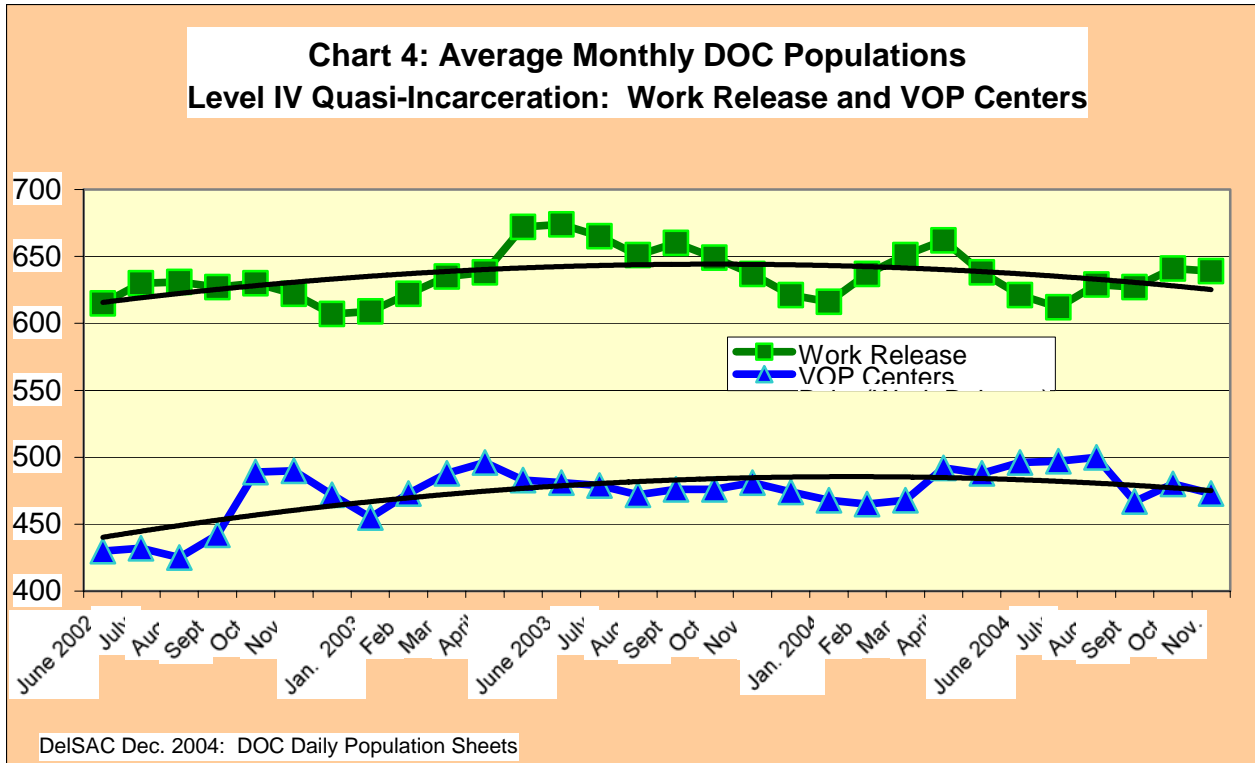
The capacity at the Sussex VOP Center is 250. As Chart 4 shows, the VOP Centers were operating at or near capacity prior to the implementation of the Probation Reform Law. This means that about 125 offenders were displaced from the Sussex VOP Center to make room for the DOC SB50 technical violators. It is possible that both the Superior Courts’ reported tendency to sentence more offenders to Level IV and the displacement for DOC SB50 technical violations held at the Sussex VOP could have put significant pressure on the Level IV held at Level V major institutions population. In spite of these changes that should be placing significant population pressure on Levels IV and V, there does not seem to be an increase in the major institutions populations. It is also possible that the increase in the technical violations to the VOP Centers coincides with a decrease in court-ordered violations of probation, but at the moment we cannot tell we cannot tell if this is occurring.

According to DOC, as of January 1, 2005, approximately 100 individuals were waiting for Level IV placement and being held at Level III on the Supervised Custody count. About another 100 individuals were waiting at Level V for placement in Level IV. DOC reports that these numbers are fairly typical, as offenders “flow up,” “flow down,” or otherwise move through Level IV, and that no significant changes have occurred since the implementation of SB50.

It is possible that two programs independent of the Probation Reform Law could be offsetting the population pressure we might anticipate seeing in Levels IV and V. First, attending the passage of House Bill 210 (included as Appendix C), SENTAC initiated an enhanced effort to release long term older, and lower-risk offenders from prison under Title 11 *Del. C.* §4217. In what amounts to a retroactive application of HB210, 140 offenders have been released from prison early with special community supervision under this initiative and which many times has resulted in a significant savings in “bed space.” Second, Project Safe Neighborhood’s Operation Disarm, a joint program involving the police and both state and federal prosecutors, has moved 124 firearm violation offenders from what would have been state prison sentences to federal prison sentences.<sup>11</sup> These programs may have saved enough prison beds to ameliorate the anticipated increase in the Level V and IV populations.

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<sup>11</sup> United States Attorney’s Office, District of Delaware. *The Ledger*. Wilmington, Delaware, December, 2004.

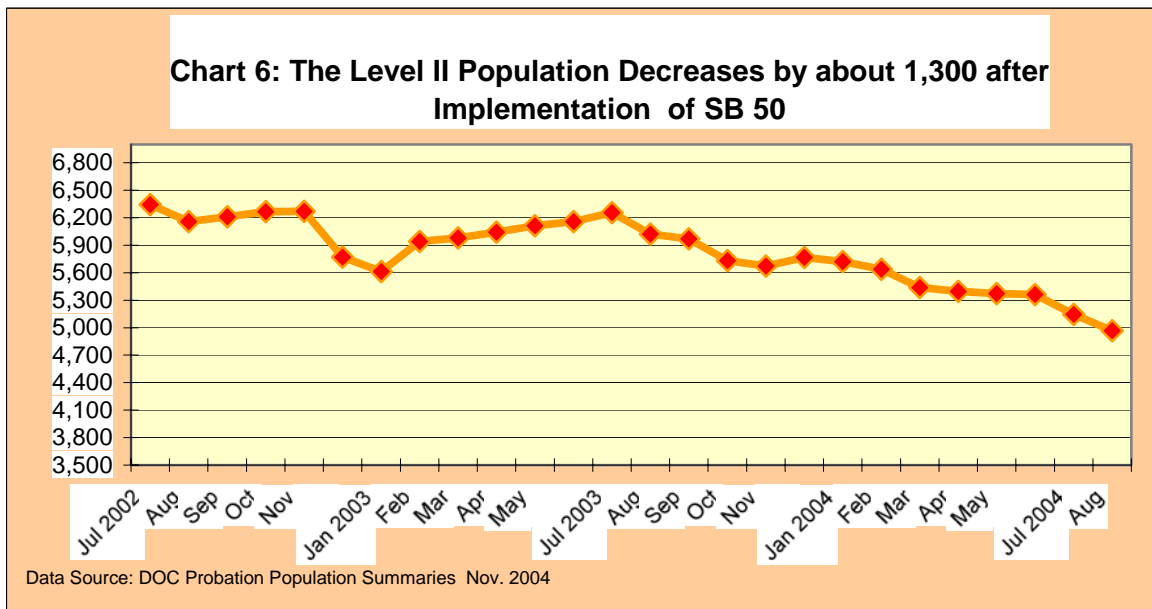
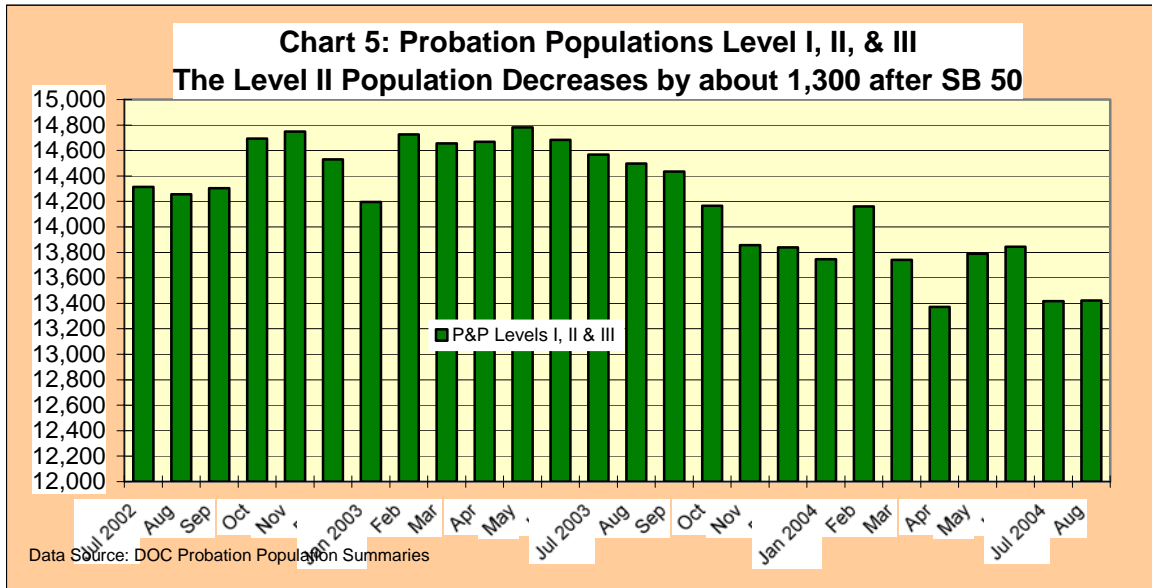


#### CHANGE IN THE DEPARTMENT OF CORRECTION VIOLATION OF PROBATION POPULATIONS

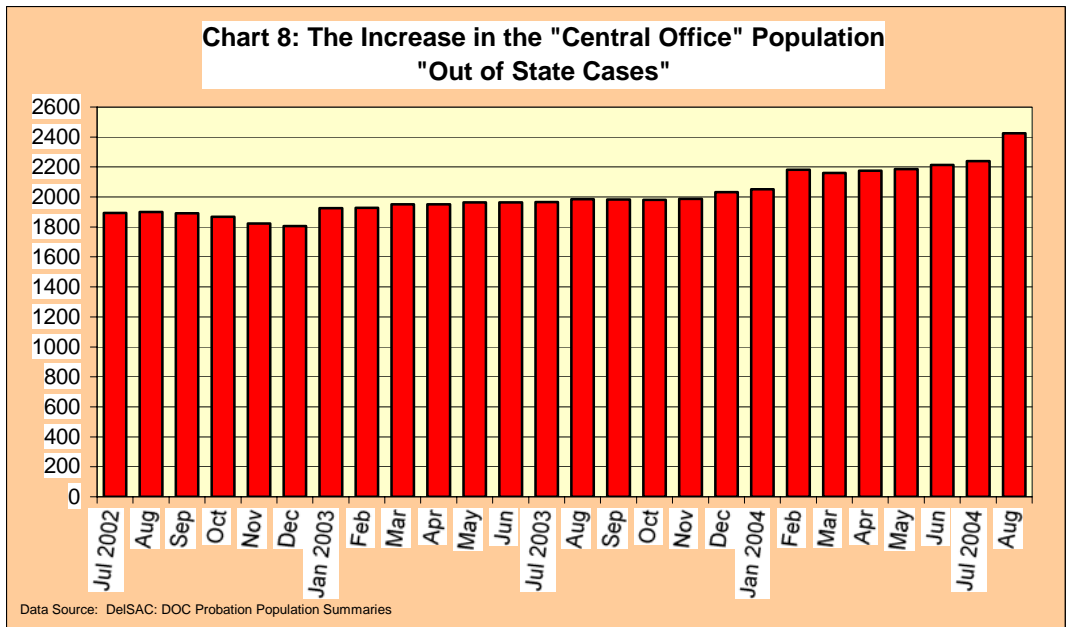
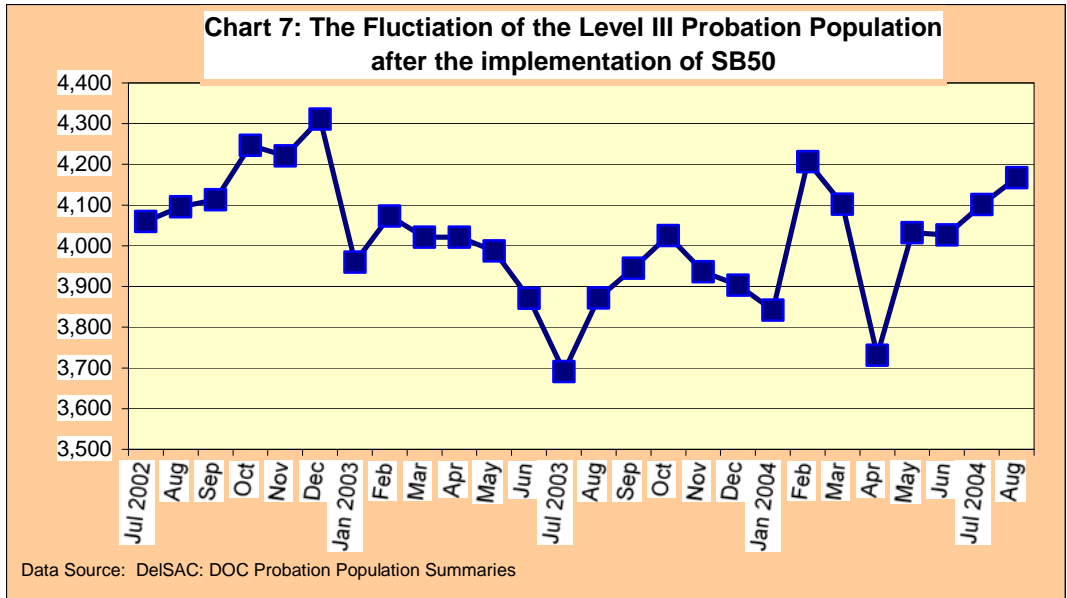
At first glance, the implementation of the Probation Reform Law appears to have an immediate impact on the size of the Levels I, II and III probation populations, as depicted in Chart 5, *Probation Populations Level I, II, & III*. Between July of 2003 and August of 2004, the Levels I, II and III probation populations decreased from about 14,700 to 13,400, a decrease of about 9 percent. Chart 6, *The Level II Population Decreases by about 1,300 after the Implementation of SB50*, shows that this decrease is due almost entirely to the decrease in the Level II probation population, which went from about 6,200 to 4,900 after the passage of SB50.

However, the decrease in the Level II probation population is offset, in part, by the increase in the Level III population since the implementation of SB50 – from 3,700 to almost 4,200, as depicted in Chart 7, *The Fluctuation of the Level III Probation Population after the implementation of SB50*. In addition, some of the reduction in the Level II population can be attributed to the changes in the Interstate Compact Agreement made in 2003. These laws provide a legal means to allow individuals who committed a crime in Delaware but normally reside in another state to have their probation transferred to the state in which they live. The changes in the Interstate Compact Agreement required that many Delaware probationers who lived out of state but close to the state line to change their reporting categories. This means that a Delaware probationer who, for instance, lives in Elkton Maryland and used to be counted on Level II probation count is now counted as a “Central Office” case (the category where interstate compact cases are counted). The “administrative” shift of these cases has caused the “Central Office” count to increase by about 500 and the Level II count to decrease by about the same number, as

depicted in Chart 8, *The Increase in the “Central Office” Population*. DOC has also undertaken efforts to request discharge of probationers that have had minor or no activity, and whose probation terms would have been finished had they been sentenced under SB50.







The fluctuation in the Level III probation population following the implementation of the Probation Reform Law may also be associated with the decrease in the Level II probation population. Following the implementation of SB50, the DOC Bureau of Community Correction issued new standards that became effective on August 13, 2003. These new standards are designed to bring Community Correction into compliance with the Probation Reform Law. The Department of Correction is authorized to administratively change an offender's SENTAC Level I, II or III level of supervision 60 days after imposition of the sentence provided the Department uses the findings of an objective classification tool to determine the appropriate level of supervision.

DOC uses the Level of Services Inventory – Revised (LSI-R) as the primary assessment method to determine the necessary level of probation after the initial 60 days of probation. Probation officers had been trained in the use of the LSI-R during the spring of 2003 and the new procedures were implemented in August 2003.

The timing of the implementation of the LSI-R reviews makes it appear that it may have caused the decrease in the Level II probation population by transferring cases to the Level III probation population. However, DOC reported that a very large percentage of probationers' sentences (about 70 percent) were justified by the LSI-R for a shift in probation level after the initial 60 days of the probation terms, but that the majority of the level changes were shifted to a lower level of supervision, not higher. Thus the LSI-R appears not to have caused the shift in the probation population.

If the fluctuations in Level III are not the result of the new classification policy, what has caused the increase in the Level III probation population? Are judges more likely to sentence to Level III after SB50? This does not seem to be the case for Superior Court. In the 2002 Superior Court SB50 study sample 19.3 percent of the Superior Court convictions resulted in direct Level III sentences. In 2003, the percent sentenced directly to Level III had only changed slightly to 20 percent.

A number of other unsubstantiated theories could account for this change, including:

1. Level III sentences increased due to “consolidated” sentencing that has occurred because of the Probation Reform Law;
2. The CCP or Family Courts have increased their Level III sentencing;
3. There has been an increase in the number of offenders moving from Level IV to III. Remarks made by Superior Court judges support the latter theory. In addition to offenders who are originally ordered to be held at Level III awaiting Level IV programs, judges also report that a significant number of offenders serving Level IV by being held at Level V are petitioning, after serving a period at Level V, to have their sentence modified so that they can await the Level IV program while serving at Level III. The greater the wait, the more likely the request would be granted.

Unfortunately, the decrease in the Level II probation population and the concurrent increase in the Level III population remains a mystery and will be an area of future study if the trend continues.

#### COMPLIANCE WITH THE PROBATION REFORM LAW'S SENTENCE LENGTH LIMITATIONS

The overall compliance with the shorter probation terms enacted under the Probation Reform Law was high when comparing Superior Court sentences from September 2002 (Pre-SB50) to September 2003 (Post-SB50). Chart 9, *Probation Reform Law 2003: Term Limits*, shows the

rate at which probation sentences were within the term limits established by SB50 both pre- and post-implementation.

Direct Probation Sentences: (Where the sentence does not include any Level IV or V time)

Although probation sentences were not required to be within the 12, 18, and 24 month parameters set by SB50 prior to its implementation, it should be noted that a relatively high proportion actually were. As shown in Chart 9, *Probation Reform Law 2003: Term Limits*, prior to SB50, more than one-half of the direct probation sentences (57 percent) were already in compliance with the SB50 probation terms limits of 12, 18, and 24 months. There are two categories of “compliant” sentences in the chart. “SB50 Term Compliant” includes those sentences whose ordered probation lengths are within stated SB50 parameters. Most of the “Other Compliant” includes sentences where the probation was discharged, but cases that were sentenced to time served or to costs and fines only are also included.

Following SB50, 94 percent of the sentences imposed were in compliance with the SB50 term limits. Violent felony SB50 compliance increased from 68.4 percent to 96.4 percent. Drug crime SB50 compliance increased from 58.6 to 97.2 percent, and nonviolent crimes increased from 55.5 percent to 91.8 percent.

Chart 10, *Pre-Post SB50 Average Probation Sentence Terms*, shows that as the compliance with SB50 increased, the length of probation sentences for direct sentences, on average, also decreased accordingly. Violent felony probation terms decreased from 25.8 to 20.3 months. Drug terms decreased from 21.6 to 14.6 months, and nonviolent terms decreased from 18.9 to 12.5 months.

Level IV and V Sentences Followed by Probation Sentences:

Prior to SB50, 54 percent of Level IV and V sentences with probation to follow were in compliance with the SB50 probation term limits. Following SB50, 88.0 percent were in compliance with the SB50 term limits. For this type of sentence, the violent felony SB50 compliance increased from 56.5 percent to 91.6 percent. Drug crime SB50 compliance increased from 54.6 to 93.6 percent, and nonviolent crimes increased from 51.6 percent to 81.7 percent (See Chart 9).

Length of probation sentences following a Level IV or V sentence, on average, decreased accordingly as shown in Chart 11, *Pre-Post SB50 Average Probation Sentence Terms—Level IV and V*. Violent felony probation terms decreased from 37.7 to 20.5 months. Drug terms decreased from 30 to 15.2 months, and nonviolent terms decreased from 24.9 to 13.3 months.

CASE CONSOLIDATIONS

The full capacity to consolidate cases by the Superior Court has not been achieved, primarily due to the issues related to information systems that were discussed previously. The Superior Court reports that between June 2, 2003 and August 31, 2004, there have been 1,730 sentence consolidations, but most are not between courts. The Court continues to rely primarily on

probation officers to determine the status of offenders in relation to sentences by other courts, a process that simply is inefficient.

However, we have an indication that the Superior Court has responded to the spirit of the Probation Reform Law by increasing the number of probation terms that are discharged. One of the standard and more effective means of simplifying multiple sentences is to discharge as unimproved older probationary terms and to use a new offense or a single count to incorporate the overall sentence that is intended. While not affecting the sentence the defendant actually will serve, it clarifies the order for better enforcement and compliance. Under SB50 there are more probation sentences that were categorized as “other” and the most frequent type of “other” probation sentence is violations of probation resulting in a “discharge from probation as unimproved.”

As shown in Chart 9 *Probation Reform Law 2003: -Term Limits* this shift to more “other” probation sentences is most obvious for direct probation sentences. For direct violent probation sentences the percentage of “other” sentences has increased from 10.5 percent prior to SB50 to 25 percent after SB50. Likewise direct probation drug “other” sentences have increased from 6.7 percent to 13.1 percent, and direct probation nonviolent “other” sentences have increased from 4.8 percent to 11.7 percent.

The percentage of “other” sentences for Level V or IV sentences followed by probation actually decreased after the implementation of SB50. The decreases are insignificant for violent and non-violent crimes, while drug “other” sentences actually decreased from 33.3 percent prior to SB50 to 24.8 percent after SB50.

This pattern seems to show a continuation of the informal practice of Superior Court judges over the past few years to have an increased propensity to discharge as unimproved older probationary sentences. This tendency to use a “discharge as unimproved” sentence for a violation of probation clearly pre-dates and may have actually been part of the inspiration for the Probation Reform Law, and is designed to clean up cases and simplify sentencing orders. We would anticipate this trend to continue as more cases are consolidated.

Chart 9

## Probation Reform Law 2003: Term Limits Compliance Findings for 24, 18, and 12 month SB50 Probation Terms Limits

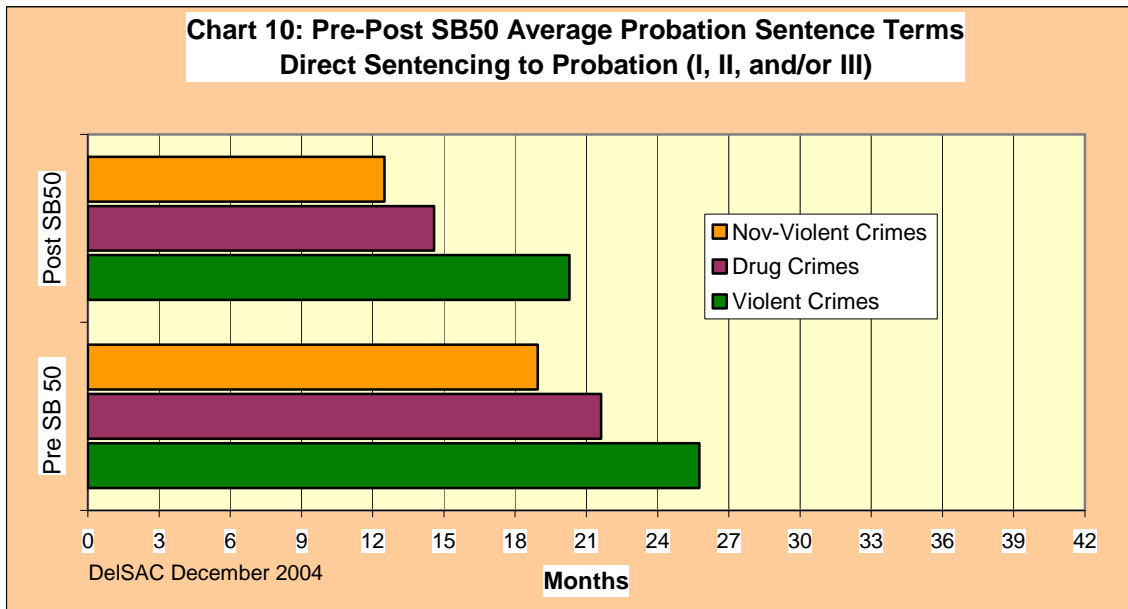
### Direct Probation Sentence: Levels I, II, and/or III

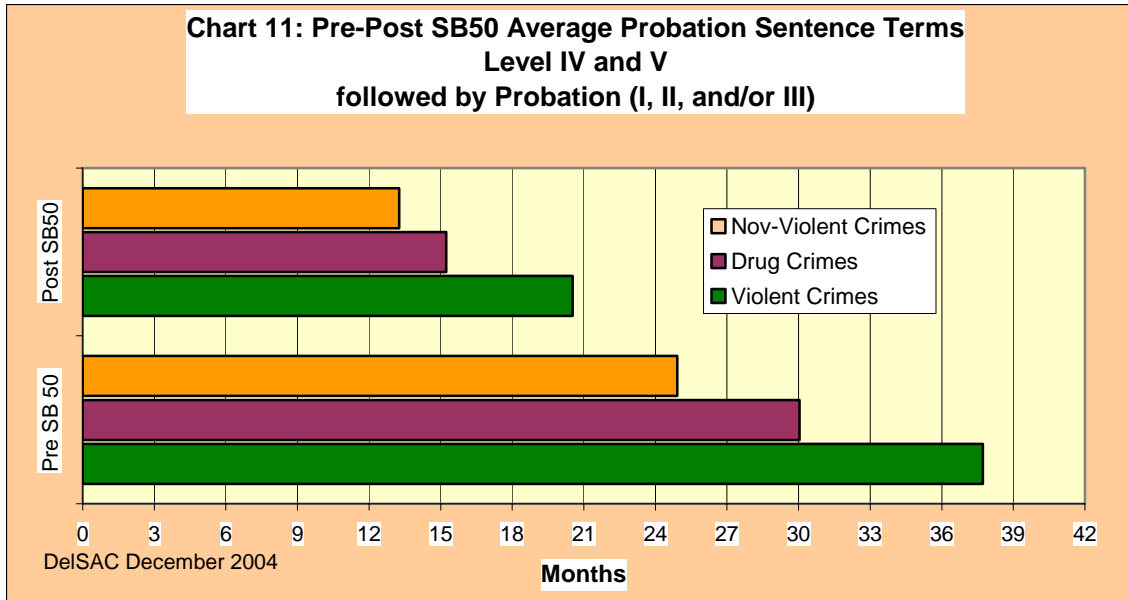
	<i>PreSB50 Baseline</i>				<i>Post SB50</i>			
	SB50 Term Compliant	Other Compliant	Total <u>Compliant</u>	Exceeds <u>SB50 Terms</u>	SB50 Term Compliant	Other Compliant	Total <u>Compliant</u>	Exceeds <u>SB50 Terms</u>
Violent Felony (24 mos.)	57.9%	10.5%	68.4%	31.6%	71.4%	25.0%	96.4%	3.6%
Drugs (18 mos.)	51.9%	6.7%	58.7%	41.3%	84.1%	13.1%	97.2%	2.8%
Non-Violent (12 mos.)	50.7%	4.8%	55.6%	44.4%	80.1%	11.7%	91.8%	8.2%

### Level IV&V Sentence followed by Probation Levels I,II,and/or III

	<i>PreSB50 Baseline</i>				<i>Post SB50</i>			
	SB50 Term Compliant	Other Compliant	Total <u>Compliant</u>	Exceeds <u>SB50 Terms</u>	SB50 Term Compliant	Other Compliant	Total <u>Compliant</u>	Exceeds <u>SB50 Terms</u>
Violent Felony ( 24 mos.)	32.6%	23.9%	56.5%	43.5%	69.4%	22.2%	91.7%	8.3%
Drugs (18 mos.)	21.3%	33.3%	54.6%	45.4%	68.8%	24.8%	93.6%	6.4%
Non-Violent (12 mos.)	21.3%	30.3%	51.6%	48.4%	51.9%	29.8%	81.8%	18.2%

Note: SB50 Term Compliant plus Other Compliant equals Total Compliant





Special SB50 Compliance Issue:

Differences Between Direct Probation and Level IV or V with Probation to Follow

Prior to SB50, there was a large difference in sentence lengths for offenders sentenced directly to probation and those offenders sentenced to Level IV or V with probation to follow. Offenders sentenced to Level V or Level IV terms were far more likely to receive longer probation terms prior than offenders sentenced directly to probation (See Charts 10 and 11). For instance, Level V or IV sentences with probation to follow averaged 38 months prior to SB50, while violent offenders sentenced directly to probation received, on average, only 26 months. Both the direct and the Level V or IV with probation to follow sentences have become largely SB50 compliant in lengths of stay after SB50 – 20.3 months for direct probation and 20.5 months for Level V or IV with probation to follow.

However, an important difference still remains between direct probation sentences and Level V or IV with probation after the implementation of SB50. Sentences to Level V or IV with probation to follow have a greater proportion of terms that exceed SB 50 limits. In fact, Level V or IV with probation to follow sentences are more than twice as likely to receive a probation term that exceeds SB50 post-SB50 limits (See Chart 9). For instance, 8.2 percent of the direct probation nonviolent offenders received a longer than expected probation term, while 18.2 percent of the Level V or IV with probation to follow received a longer than expected sentence.

The Probation Reform Law provides judicial discretion to increase probation sentences for violent offenders beyond the statutory limit when the sentencing court on the record determines that a longer period of probation will reduce the likelihood that the offender will commit another violent offense. However, this is not the case for drug (initially) or nonviolent offenses. Therefore, the non-compliance rates of 3.6 percent for violent direct probation sentences and 8.3 percent for violent Level V or IV with probation to follow are not unexpected and may be surprisingly low. The higher non-compliance rates for non-violent crimes of 8.2 percent for

direct probation sentences and 18.2 percent for Level V or IV with probation to follow are unexpected.

A clue to the high SB50 non-compliance for nonviolent crime may be found in the Superior Court comments regarding the implementation of SB50, which mentioned that Superior Court judges are sentencing nonviolent offenders to Level IV as a means to get around the SB50 probation limit of one year. The one-year SB50 term limit for nonviolent offenders is often perceived as too short. Superior Court judges may not only be shifting nonviolent offenders to Level IV or V to avoid short SB50 terms, but they are also, in 18.2 of the cases, coupling Level V and IV terms with longer non-compliant SB50 probation terms (average 19.4 months). This noncompliance will need to be addressed either directly by the courts or in a modification to the existing law.

#### THE NUMBER OF SUCCESSFUL PROBATIONERS WILL INFLUENCE THE IMPACT OF THE PROBATION REFORM LAW

The primary purpose of the Probation Reform Law is to shorten probation terms with the expectation that the number of persons on probation and subsequently the number of violations of probation that lead to incarcerations in jail (terms of one year and less) and prison (terms of more than one year) will be also be reduced. Both probation populations and the number of persons incarcerated are expected to decrease because of this law.

The notion of “recidivism” is crucial to the scheme of shortened probations. For the purposes of this study, we have defined recidivism as the commission of a new crime, a violation of probation, or both, that results in a new conviction. We have used this measure because the number of people who successfully complete probation – that is, those who don’t recidivate -- will help determine the impact of the Probation Reform Law.

To achieve the maximum benefit from SB50, the recidivism rate for the years following the shortened probation term limits needs to be lower than for like types of probationers in the pre-SB50 period. Fewer people need to violate and/or commit new crimes during these shorter probation periods; or conversely, more people need to successfully complete their probation by not violating conditions or committing new offenses. If recidivism is not lower, there is no chance for there to be a reduction in the number of persons on probation and subsequently a reduction in violations of probation that lead to incarceration.

For instance, the non-violent SB50 term of one year should be releasing people from DOC supervision about a year earlier than occurred prior to SB50. To the degree that these “early released” probationers do not recidivate – compared to the prior system with longer probation terms – there should be fewer people finding their way back to jail.

As Chart 2 shows, however, not enough time has passed since the implementation to begin to test these expectations because the first group of SB50 offenders – those who received one-year terms in the second half of 2003 are just now being released from DOC supervision.

## Baseline Recidivism Findings and Our First Peek at SB50 Recidivism

However, as a starting point, recidivism patterns for offenders sentenced to direct probation in September of 2002 (a pre-SB50 sample) and in September 2003 (a post-SB50 sample) are compared for the first year of probation. We tracked recidivism – measured as a probation violation and/or commission of a new offense, for those offenders sentenced by Superior Court in September of 2002 (the pre-SB50 sample) to determine one-year recidivism rates. We then tracked all persons sentenced by Superior Court in September 2003 (the post-SB50 sample), through November 2004, obtaining a full year of recidivism for as many offenders as possible. We have a full year of post-sentencing recidivism for the post-SB50 direct probation cases, and a partial view of at-risk time for persons sentenced to Level IV and short jail terms or the Level V six-month boot camp program.

These first year recidivism results are important because they represent offenders that will not be released from DOC supervision because they have already recidivated and re-entered the criminal justice system. The lower the recidivism rate during the first year of SB50 non-violent direct probation, the more persons there are to release from supervision because they have successfully completed their term of probation. A high recidivism rate in the first year will leave fewer offenders to be released – thus diminishing the expectations of a reduction in criminal justice populations.

Another factor that will impact the effectiveness of SB50 at reducing the number of probationers and future probation violators is how probation violations are handled. One reported change is that judges are sentencing some probation violators to short stays at the VOP centers or short jail terms with no probation to follow. If this reported trend becomes significant, the number of probationers, and hence the potential for probation violations, will diminish over time.

Recidivism rates for direct probationers are important because direct probationers make up about 42 percent of the Superior Court convictions in any given month – about 370 monthly or 4,500 annually.

Recidivism as used in this study includes offenders sentenced by Superior Court who are re-arrested or who violate their probation and are re-convicted in Superior Court. Thus, by either measure, the offenders have found their way back into the criminal justice system. Felonies, misdemeanors, DUIs and suspensions under Title 21 *Del C.* §2756 are events that are counted as an arrest. Because of resource limitations, only convictions for violations stemming from the case that resulted in the probation term are counted. That is, if an offender has multiple probation cases open, a violation for a case separate from the one resulting in the term in question is not counted. Likewise, civil contempt and criminal non-support cases, each of which could result in detention or a jail term, are not counted.

Chart 12, *Direct Probation Recidivism* shows the recidivism rates for persons sentenced to Level I, II and III by Superior Court at the end of the first year following sentencing. For non-violent direct probationers this is about the time that they are being released from DOC supervision. For a drug offender – without an SB50 extension -- the first year recidivism rate measures what

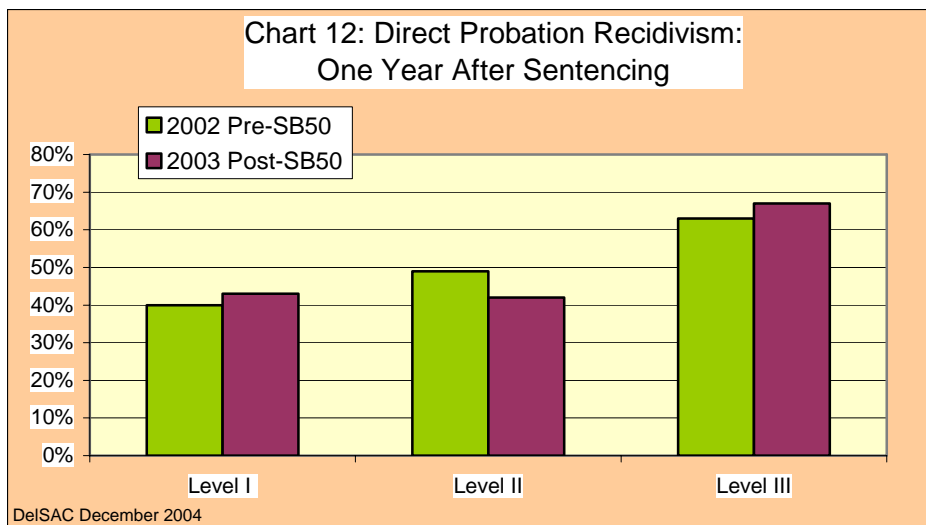


happens about two-thirds of the way through the probation term. For a violent offender, the first year recidivism rate measures what happens about half way through the probation term.

By the end of the first year for Level I probation, between 40 percent (2002) and 43 percent (2003) of the offenders have been re-arrested or sentenced for a violation of probation. Of the estimated 300 persons a year directly sentenced to Level I by Superior Court, about 125 of these persons have already re-entered the criminal justice system.

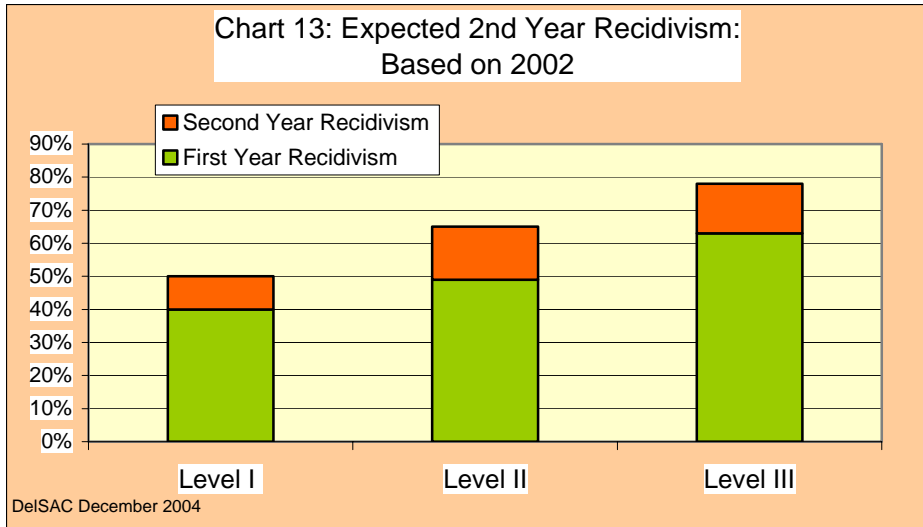
Likewise, of the approximately 1,900 direct Level II probations a year, 46 percent or about 875 will have re-entered the criminal justice system. Of the 2,100 direct Level III probations a year, 65 percent or about 1,365 will have re-entered the criminal justice system.

The differences in the violation rates for Levels I, II, and III pre and post SB50 are not significant.



#### As Time Goes On Recidivism Increases: A Initial View

As shown in Chart 13, *Expected 2<sup>nd</sup> Year Recidivism*, by the end of the second year (as measured in the 2002 sample) – which is at about the end of the drug offenders with drug treatment extensions and the end of the terms of violent offenders sentenced directly to probation – recidivism increases. By the end of the second year 50 percent of Level I, 65 percent of the Level II, and 78 percent of the Level III probationers have either been re-arrested or violated their probation (remember, only the violation for one of the active probations has been counted). These high rates for second year recidivism reduces the number of post release SB50 offenders available for “not recidivating” because of shortened SB50 terms. For instance, of the 2,100 Level III sentences per year 78 percent (about 1,640) may have already recidivated before completing their probation.



A Sample of Level IV and Level V Recidivism Rates

Chart 14, *2002 and 2003 Preliminary Level V and IV*, provides a preview of what SB50 recidivism rates are or may be in the future for offenders sentenced by Superior Court to Level V or IV, most of whom have probation to follow. These recidivism rates track those cases with a Level V or IV sentence with at least one year at risk since leaving the Level V or IV facility or program. Recidivism for these cases is high. Even though these results are preliminary, it is clear that the reduced terms of probation will not reduce the numbers of probation violations to the extent hoped, thereby reducing Level IV and V admissions.

It is important to remember that these rates include violations of probation, convictions for new crimes, or both. In the future, we hope to be able to differentiate these events, but currently data limitations make it difficult. In addition, these recidivism rates are for offenders sentenced by Superior Court. Recidivism rates for offenders sentenced to Level IV or V with probation to follow may be different for offenders sentenced by other courts, particularly CCP where the nature of the sentencing offense is significantly different than those found in Superior and Family Courts. But this potential difference is unknown at the moment.

The 2003 Level V boot camp recidivism rate appears lower because these offenders have not been at risk for a full year since their release from boot camp.

Because the Level IV recidivism rates were high, a closer examination of these individuals was conducted to determine the outcomes of the new arrest or violation. Of the recidivists, 90 percent (119 out of 132 cases) are currently detained or otherwise pending a new Superior Court hearing (seven individuals), or have been sentenced to an additional Level IV or Level V term. (Some of these new sentences include extradition to other jurisdictions or terms to federal prison).

Chart 14  
2002 and 2003 Preliminary Level V and Level IV with Probation to Follow  
Recidivism Rates One Year "at risk"

Level IV with Probation to Follow

	2002 Baseline One Year	2003 SB 50 Cases One Year
VOP Centers	81%	81%
Residential Treatment	74%	74%
Work Release	81%	67%
Home Confinement	77%	78%
Not Specified Level IV	78%	100%

Level V with Probation to Follow

	2002 Baseline One Year	2003 SB 50 Cases Partial Yr.	
Boot Camp	65%	38%	( 5 to 6 months at risk)
Jail: Term Only <= One Year	62%	63%	(about 9 months at risk)

DelSAC January 2005

It is important to note as Chart 14 is reviewed that recidivism is measured as re-arrest or a Superior Court conviction for violation of probation within one year of the offender being released from the Level IV or V term. Re-arrest is a standard reason for violating a probation term. Re-arrest includes any Title 11 (criminal charge), Title 16 (drug charge) and "jail-able" Title 21 traffic offense such as a DUI, Suspended while Driving and Driving after Judgment Prohibited. An Operation Safe Streets curfew violation and a drug court positive drug test violation, if they result in a Superior Court conviction, would also be counted in the recidivism rate. Although sometimes referred to as "technical violations," these events often result in the use of DOC detention and sentenced beds.

Arrests for a capias associated with a failure to appear, a failure to pay a fine, a failure to pay restitution and Family Court criminal non-support violations are not included in the re-arrest counts. New DOC administrative SB50 violations for up to 5 days at a VOP Center, likewise, are not included as a re-arrest or a violation.

These first year recidivism results are important because they represent offenders that will not be released from DOC supervision, because they have already recidivated and re-entered the criminal justice system at some level. In our sample of Level IV offenders, the great majority had been returned to Level IV or Level V. The lower the recidivism rate during a SB50 probation term, the more persons there are to release from supervision because they have successfully completed their term of probation. A high recidivism rate in the first year, and subsequent years for violent offenders, will leave fewer offenders to be released – thus diminishing the expectations of a SB50 reduction in criminal justice populations.

## CONCLUSIONS AND RECOMMENDATIONS

Although it is too early to assess the full impact of SB50, and indeed the ramifications of this bill will unfold over several years, this report provides a preliminary examination of trends that are likely to emerge, and provides an opportunity to examine the operational challenges posed by this significant legislation.

Based on this examination, we believe that the Probation Reform Law will have a positive effect for several reasons. It has created realistic probationary terms that can be consistently applied. This has been accomplished while at the same time providing control over violent offenders and offenders who commit sex crimes, encouraging and enabling treatment for addicted offenders, enhancing the collection of, and providing administrative options for minor probation violations. In addition, it encourages judges, through consolidation and other sentencing practices, to organize sentences so they make more sense for individual offenders, and cuts down on probation terms that are inordinately long and unduly difficult to complete successfully. In the long run, it is likely to cut down on both court proceedings and bed space used by technical violators.

Because it is so early in the process, our recommendations are brief.

1. Support the ability of the Sentencing Accountability Commission, the Delaware Sentencing Research and Evaluation Committee, and the Statistical Analysis Center to continue to analyze the impact of this reform effort over time. Require a supplementary report on impact and trends in January of 2007 and January of 2009. The current analysis has enabled us to uncover a number of trends that appear to be occurring in the system. A continued examination of the impact of this legislation on correctional resources, court practices, and recidivism trends are among the essential topics for future research.
2. Modify current legislation so that inconsistencies between SB50 and existing law are reconciled. Specifically, reconcile post-boot camp probation terms (Title 16 §6712(d)(1)) and the first offenders' controlled substances diversion program (Title 16 §4764(b)) so they are consistent with the intent of SB50 to limit probation supervision for drug offenses to 18 months.
3. Support the abilities of the courts and the Department of Correction to implement and monitor the changes brought about by the Probation Reform Bill. Any future information systems improvements must encompass and enhance the ability to implement, operationalize, and analyze SB50 changes, as well as support more efficient sentence consolidations. Without reliable and accurate data to analyze, neither the Commission, the Research Committee, nor SAC will be able to perform their responsibility of providing recommendations and comments that will enable the executive and legislative branches to draft effective future legislation.

**REFERENCES**

1. Delaware Sentencing Research and Evaluation Committee (2004). *Correctional Treatment in Delaware: Strategies for Success*. Dover, DE.
2. Delaware Sentencing Research and Evaluation Committee (2004). *Operation Safe Streets/Governor's Task Force: Review and Impact*. Dover, DE.
3. Statistical Analysis Center, Office of the Budget (1998). *Crime in Delaware, 1987*. Dover, DE.
4. Statistical Analysis Center, Office of the Budget (January 2004). *Crime in Delaware, 2002*. Dover, DE.
5. United States Attorney's Office, District of Delaware. *The Ledger*. Wilmington, Delaware, December 2004.

Chart 15 and 16 provide an overview of the Superior Court processes for the two typical offenders – the early blooming property offender and the late blooming drug seller. For these two offenders careers, their arrest, DOC and Superior Court histories are integrated to provide a more thorough overview of their personnel criminal career and our system response to that series of arrests and violations of court orders.

**Technical Note:**

The identity for these two individual cases cannot be deduced from the information presented in these displays. The location of the courts, age, and dates of official contacts have all been masked or altered. Yet, the severity and the nature of the crimes as well as the general sequence have been reasonably represented so as to accurately portray the way the criminal justice system handles these types of cases.

These case studies focus on two truly mid-range individuals that are not unlike a standard offender described in the recent Operations Safe Streets – Governor’s Task Force report (SREC-DelSAC December 2004). In Operations Safe Streets – Governor’s Task Force report a typical offender on that caseload, which is primarily Level III probationers, is described as a person with 19 prior arrests. Within these 19 arrests it is found that, on average, 2.4 are Title 11 violent arrests, 1.7 are weapon arrests, and 2.9 are illicit drug arrests (most of these are for selling illicit drugs), as well a collection of other non violent felony and misdemeanor arrests.

The individuals in this SB50 case study are also typical because they are neither habitual offenders nor were they sentenced for 10 to 20 year terms for very serious crimes. Neither are these offenders young first time offenders. (See the OSS-GTF report, December 2004).

These two typical Superior Court offenders are males in their thirties. One started his criminal career with an arrest in his early teens. As an “early bloomer” he was arrested 6 times before 18. The other offender did not start his criminal career until after he turned 20 – the “late bloomer”. Both offenders were plenty active before their first Superior Court conviction. It took both offenders until their mid-twenties after compiling 12 to 14 misdemeanor arrests (or some felony arrests that were reduced to misdemeanors and processed in Court of Common Pleas) to be arrested for felonies serious enough to be convicted in Superior Court. Prior to their Superior Court involvement these two offenders, although very active in their criminal adventures, spent 9 percent or less of their time in DOC detention or sentenced status.

The early bloomer’s felony court activity started with burglary and theft related activity. Only in subsequent arrests, which still tended to be property crime related, was he to be arrested for a secondary charge of drug possession. The early bloomer has three Superior Court convictions occurring in two different counties. In his criminal career, the early bloomer has been arrested on 33 separate occasions.

The late bloomer developed into an accomplished drug seller with four drug related Superior Court convictions. These convictions occurred in a single county. In his criminal career, the late bloomer has been arrested on 20 separate occasions.

While active with the Superior Court system, these two offenders spent large amounts of time in DOC facilities. The early bloomer was detained or incarcerated 67 percent of the time (1,400 days) and the late bloomer was detained or incarcerated 77 percent of his time (3,135 days).



### Chart 16: A Typical Superior Court Offender Criminal Career

36 Year Old Male  
A Late Blooming Drug Seller

Juvenile History: No Juvenile Arrests

Adult History Prior to Superior Court Involvement  
1 Felony Drug Sales reduced for CCP action, 1 other Felony reduced for CCP action  
11 misdemeanor arrests and lower court action.  
Two very brief pre-trial detentions between 1988 and 1991

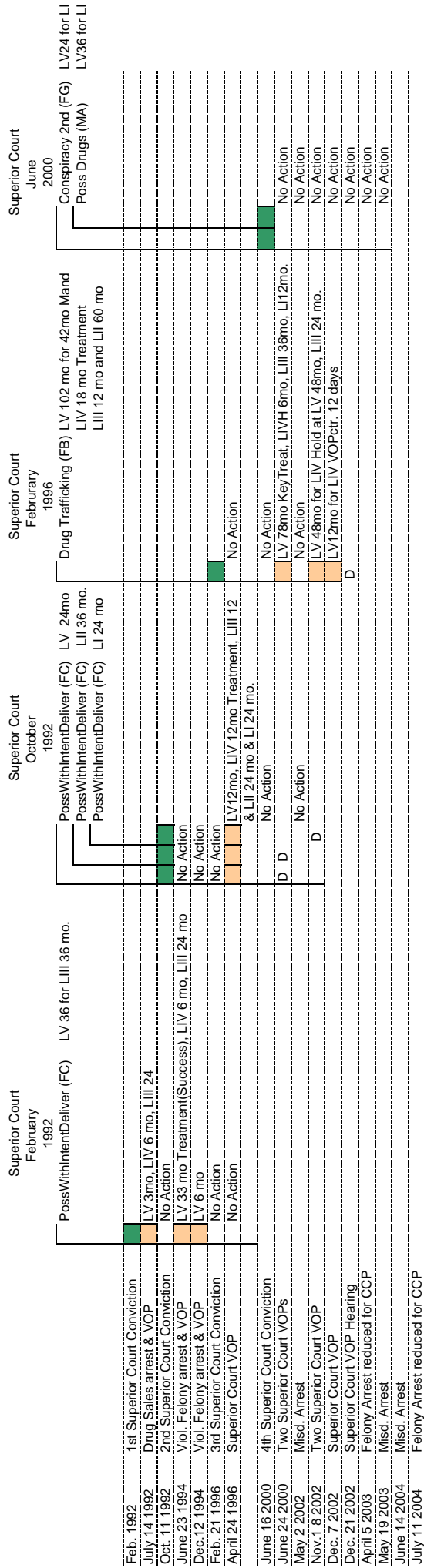
#### Legend

"C" means the case was continued without changing the sentence.

"D" Discharged as unimproved.

Superior Conviction

Violation of Probation



Between February 1992 to December 2002, the most active Superior Court period, this offender spent 3,135 days in DOC LV, LIV or pre-trial detention which involved 77 percent of possible time.

Since December 2002, this offender while remaining active in the lower courts does not have any new arrests for drug sales. His time in DOC Level V, IV and pre-trial detention has also decreased. In the last 20 months he has been in DOC 35 days or 6 percent of the possible time. He has numerous Family Court and CCP Failure to Pay captias and warrants.



**SENATE Bill 50**

AN ACT TO AMEND TITLES 10 AND 11 OF THE DELAWARE CODE RELATING TO PROBATION AND RESTITUTION IN CRIMINAL CASES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 4204(c)(9) of Title 11 of the Delaware Code by adding immediately after the last sentence thereof the following:

“Notwithstanding any law, rule or regulation to the contrary, for the purposes of ensuring the payment of restitution the court shall retain jurisdiction over the offender until the amount of restitution ordered has been paid in full.”

Section 2. Amend Section 4204(c) of Title 11 of the Delaware Code by adding a new paragraph “(10)” to said subsection, to read as follows:

“(10) Whenever restitution is ordered pursuant to paragraph (9) of this subsection or any other applicable statute or rule, and if deemed appropriate to ensure or facilitate the collection of restitution from the defendant or if otherwise required by statute, the court may impose a sentence involving an Accountability Level I - Restitution Only sanction. Such a sanction shall be limited to the placement of the offender upon unsupervised probation, and the conditions of such probation shall be limited to those that are necessary to ensure or facilitate the collection of restitution. No offender shall be found to be in violation of the conditions of such a sanction unless he or she is found to be in violation of an applicable restitution order.”

Section 3. Amend Section 4204 of Title 11 of the Delaware Code by redesignating subsection “(m)” thereof as subsection “(n)”, and by adding a new subsection “(m)” thereto, to read as follows:

“(n) As a condition of any sentence, and regardless of whether such sentence includes a period of probation or suspension of sentence, the Court may order the offender to engage in a specified act or acts, or to refrain from engaging in a specified act or acts, as deemed necessary by the court to ensure the public peace, the safety of the victim or the public, the rehabilitation of the offender, the satisfaction of the offender’s restitution obligation to the victim or his or her financial obligations to the State, or for any other purpose consistent with the interests of justice. The duration of any order entered pursuant to this subsection shall not exceed the maximum term of commitment provided by law for the offense or 1 year, whichever is greater; provided that in all cases where no commitment is provided by law the duration of such order shall not exceed 1 year. A violation of any order issued pursuant to this subsection shall be prosecuted pursuant to 11 Del.C. §1271. Any

such prosecution pursuant to 11 Del.C. §1271 shall not preclude prosecution under any other provision of this Code.”

Section 4. Amend Section 4333 of Title 11 of the Delaware Code by striking the body of said section in its entirety, and by substituting in lieu thereof the following:

“(a) The period of probation or suspension of sentence shall be fixed by the Court subject to the provisions of this section. Any probation or suspension of sentence may be terminated by the court at any time and upon such termination or upon termination by expiration of the term, an order to this effect shall be entered by the court.

(b) The length of any period of probation or suspension of sentence shall be limited to:

- (1) 2 years, for any Title 11 violent felony as designated in §4201(c) of this Title;
- (2) 18 months, for any offense set forth in Title 16 of this Code; or
- (3) 1 year, for any offense not otherwise specified in paragraphs (1) or (2) of this subsection.

(c) Any offender who is serving more than one sentence imposed following convictions in more than one case shall not serve a consecutive period of probation or suspension of sentence that is in excess of the limitations imposed by subsection (b) of this section. Any sentence of probation or suspension of sentence (or any portion thereof) which, if served consecutively to another such sentence, would result in an aggregate sentence of probation or suspension of sentence in excess of the limitations imposed by subsection (b) of this section shall be deemed to be concurrent to such other sentence.

(d) The limitations set forth in subsection (b) and (c) of this section shall not apply:

- (1) to any sentence imposed for a conviction of any sex offense as defined in §761 of this Title if the sentencing court determines on the record and by a preponderance of the evidence that a longer period of probation or suspension of sentence will reduce the likelihood that the offender will commit a sex offense or other violent offense in the future;
- (2) to any sentence imposed for any Title 11 violent felony as designated by §4201(c) of this Title if the sentencing court determines on the record and by a preponderance of the evidence that public safety will be enhanced by a longer period of probation or suspension of sentence; or
- (3) to any sentence imposed for any offense set forth in the Delaware Code if the sentencing court determines on the record and by a preponderance of the evidence that a longer period of probation or

suspension of sentence is necessary to ensure the collection of any restitution ordered, except that any period of probation ordered pursuant to this paragraph that is in excess of the limitations set forth in subsections (b) and (c) of this section shall be served at Accountability Level I - Restitution Only pursuant to the terms of §4204(c)(10) of this Title.

(e) The limitations set forth in subsection (b) and (c) of this section may be exceeded by up to 90 days by the sentencing court if it determines that the defendant has not yet completed a substance abuse treatment program ordered by the court, provided that each extension of sentence ordered pursuant to this subsection shall be preceded by a hearing, and by a finding on the record and by a preponderance of the evidence, that such extension of sentence is necessary to facilitate the completion of the substance abuse treatment program.

(f) Except as provided by subsection (g) of this section, in no event shall the total period of probation or suspension of sentence exceed the maximum term of commitment provided by law for the offense or 1 year, whichever is greater; provided that in all cases where no commitment is provided by law the period of probation or suspension of sentence shall not be more than 1 year.

(g) Any period of custodial supervision imposed pursuant to §4204(l) of this Title shall not be subject to the limitations set forth by this section.

(h) Notwithstanding any provision of this Code or court rule to the contrary, any Superior Court judge who is presiding over any proceeding at which an offender is sentenced or found to have violated any condition or term of an imposed period of probation or suspension of sentence shall be deemed to have jurisdiction over any sentence to a period of probation or suspension of sentence currently being served by the offender regardless of the court or county in which such sentence was originally imposed, and may modify, revoke or terminate any such period of probation or suspension of sentence.

(i) Notwithstanding any law, rule or regulation to the contrary, the Department shall have the authority without leave of the Court to reclassify any offender serving a sentence of probation at Accountability Levels I, II or III between said levels as deemed necessary and appropriate by the Department, provided that at least 60 days has elapsed from the date on which such sentence was originally imposed, and provided that the Department shall first evaluate the offender using an objective classification tool designed to assist in the determination of the appropriate level of probation. Offenders shall be reevaluated and reclassified periodically as the Department deems necessary and appropriate.”

Section 5. Amend Section 4334 of Title 11 of the Delaware Code by redesignating subsection (d) thereof as subsection “(e)”, and by striking subsection (c) thereof in its entirety, and by adding new subsections “(c)” and “(d)” to said section, to read as follows:

“(c) Upon such arrest and detention, the Department shall immediately notify the court and shall submit in writing a report showing in what manner the probationer has violated the conditions of probation or suspension of sentence. Thereupon, or upon arrest by warrant as provided in subsection (b) of this section, the court shall cause the probationer to be brought before it without unnecessary delay, for a hearing on the violation charge. The hearing may be informal or summary. If the violation is established, the court may continue or revoke the probation or suspension of sentence, and may require the probation violator to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

(d) Notwithstanding any provision of subsection (c) of this section or any other law, rule or regulation to the contrary, the Department is authorized to administratively resolve technical and minor violations of the conditions of probation or supervision at Accountability Levels I, II, III or IV when a sanction less restrictive than Level V is being sought by the Department as a result of the violation, and is further authorized to administratively resolve technical and minor violations of conditions of probation at Accountability Levels I, II, III, or IV by placing the probationer at Accountability Level IV for a period of not more than 5 days consecutively, and not more than 10 days in any one calendar year. The Department shall adopt written procedures providing for administrative review for all cases in which an offender is placed at level IV pursuant to this subsection. All administrative dispositions imposed pursuant to this subsection shall be documented in the offender's record and shall be made available to the court in the event of a subsequent violation which is considered by the court. For the purposes of this subsection, the term “technical and minor violations of the conditions of probation or supervision” shall not include arrests or convictions for new criminal offenses.” For the purposes of this subsection, the limits pertaining to the use of Level IV as administrative sanction for technical and minor violations of Level I, II or III shall not apply to the use of home confinement for such purposes.”

Section 6. Amend Section 6504(14) of Title 11 of the Delaware Code by striking the first two sentences of said subsection and by substituting in lieu thereof the following:

“(14) Collecting a fee as a condition of probation supervision. An offender sentenced to probation shall be charged a fixed fee of \$200.00 for each period of probation. If an offender is serving multiple sentences of probation

simultaneously, the sentences shall be treated as one period of probation for the purposes of assessing and collecting the supervision fee.”,

and further by deleting the word "monthly" as found twice in the remainder of that subsection.

Section 7. Amend Section 4101(b) of Title 11 of the Delaware Code by striking the second sentence of said subsection in its entirety, and by substituting in lieu thereof the following:

“Such judgment shall be immediately executable, enforceable and/or transferable by the State or by the victim to whom such restitution is ordered in the same manner as other judgments of the court. If not paid promptly upon its imposition or in accordance with the terms of the order of the court, or immediately if so requested by the State, the clerk or Prothonotary shall cause the judgment to be entered upon the civil judgment docket of the court; provided, however, that where a stay of execution is otherwise permitted by law such a stay shall not be granted as a matter of right but only within the discretion of the court.”

Section 8. Amend Section 4101(b) of Title 11 of the Delaware Code by adding immediately after the last sentence of said subsection the following:

“Judgments docketed pursuant to this subsection shall be exempt from the provisions of 10 Del. C. §4711 which mandate the expiration of judgments, and which require the renewal of such judgments.”

Section 9. Amend Section 4711 of Title 10 of the Delaware Code by adding a new paragraph to said section, to read as follows:

“This section shall not apply to those judgments entered of record pursuant to court-ordered restitution awards as provided in 11 Del. C. § 4101(b).”

Section 10. Within 90 days of the effective date of this Act, the Sentencing Accountability Commission will promulgate guidelines that will substantially reduce use of probation as a means of punishment. These guidelines shall include meaningful restrictions on the practice of imposing sentences involving short periods of incarceration that are followed by long periods of probation. Within 180 days of the effective date of this Act, the Sentencing Accountability Commission will review proceedings conducted pursuant to 11 Del.C. §4333(h) as promulgated herein, will make recommendations concerning the proper allocation of resources by the judiciary for this purpose and will identify any funding sources necessary to support this procedure. On or before January 15, 2005, the Sentencing Accountability Commission and the Statistical Analysis Center shall issue a joint report to the Governor, the Controller General, and to the respective Chairs of the House and Senate Correction Committees regarding the effect of this legislation on the administration of justice.

Section 11. This Act shall be effective 30 days after its enactment.

Author: Senator Vaughn

**Senate Bill No. 150**

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend § 4333 of Title 11 of the Delaware Code by adding a new subsection “(j)”  
2 thereto, to read as follows:

3                       “(j) Notwithstanding any other provision to the contrary, the provisions of subsections (b), (c), (d) and (e)  
4 of this section shall be applicable to sentences imposed prior to June 1, 2003 only upon an order of the Court entered  
5 for good cause shown after its consideration of an application for sentence modification filed by the Department of  
6 Correction.”

7           Section 2. Amend § 4333(c) of Title 11 of the Delaware Code by adding immediately after  
8 the last sentence thereof the following:

9                       “The provisions of this subsection shall not apply to a sentence imposed for a  
10 conviction involving an offense committed while the offender was serving a period of  
11 probation or suspension of sentence.”

12           Section 3. Amend § 4333 (d)(1),(2),(3) of Title 11 of the Delaware Code by striking the  
13 phrase “and by a preponderance of the evidence” as it appears variously in said paragraphs.

14           Section 4. Amend § 4333(e) of Title 11 of the Delaware Code by striking the phrase “and by  
15 a preponderance of the evidence” as it appears in said subsection.



## Appendix D

SPONSOR: Rep. Smith & Rep. Van Sant &  
Rep. Wagner & Rep. DiPinto & Rep. B.  
Ennis & Sen. Vaughn & Sen. Sorenson;  
Reps. Spence, Lee, Buckworth, Carey, D.  
Ennis, Ewing, Fallon, Hudson, Lavelle,  
Lofink, Maier, Oberle, Quillen, Reynolds,  
Ulbrich, Valihura, Gilligan, Hall-Long,  
Houghton, Keeley, Mulrooney, Williams;  
Sens. Blevins, Henry, Marshall, Peterson,  
Sokola, Venables, Still, Simpson, Cloutier

### HOUSE OF REPRESENTATIVES

142nd GENERAL ASSEMBLY

HOUSE BILL NO. 210  
AS AMENDED BY  
SENATE AMENDMENT NO. 3

AN ACT TO AMEND TITLES 10, 11, 16 AND 21 OF THE DELAWARE CODE RELATING TO CERTAIN CRIMES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 613 of Title 11 of the Delaware Code by striking the phrase “class C felony” as it appears variously in the catchline and in Subsection (c) of said Section, and by inserting in lieu thereof the phrase “class B felony”.

Section 2. Amend § 632 of Title 11 of the Delaware Code by striking the phrase “class C felony” as it appears variously in the catchline and last sentence of said Section, and by inserting in lieu thereof the phrase “class B felony”.

Section 3. Amend § 635 of Title 11 of the Delaware Code by striking the phrase “class B felony” as it appears variously in the catchline and body of said statute, and by inserting in lieu thereof the phrase “class A felony”, and by striking the last sentence of said Section.

Section 4. Amend § 825 of Title 11 of the Delaware Code by redesignating the existing text of said Section as Subsection “(a)”, and by adding new Subsections “(b)” and “(c)” to said Section, to read as follows:

“(b) Notwithstanding any provision of this Section or Code to the contrary, any person convicted of Burglary in the Second Degree shall receive a minimum sentence of:

(1) one (1) year at Level V; or

- (2) three (3) years at Level V, if the conviction is for an offense that was committed within five (5) years of the date of a previous conviction for burglary first or second degree or any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to such offenses, or if the conviction is for an offense that was committed within five (5) years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for burglary first or second degree conviction or for any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to such offenses.”.

Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this Title.

- (c) The sentencing provisions of subsection (b) of this section apply to attempted burglary in the second degree as well as burglary in the second degree.”.

Section 5. Amend § 826 of Title 11 of the Delaware Code by redesignating the existing text of said Section as Subsection “(a)”, and by adding new Subsections “(b)” and “(c)” to said Section, to read as follows:

- “(b) Notwithstanding any provision of this Section or Code to the contrary, any person convicted of Burglary in the First Degree shall receive a minimum sentence of:

- (1) two (2) years at Level V; or
- (2) four (4) years at Level V, if the conviction is for an offense that was committed within five (5) years of the date of a previous conviction for burglary first or second degree or any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to such offenses, or if the conviction is for an offense that was committed within five (5) years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for burglary first or second degree conviction or for any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to such offenses.

Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this Title.”.

- (c) The sentencing provisions of subsection (b) of this section apply to attempted burglary in the first degree as well as burglary in the first degree.”.



Section 6. Amend § 832(b) of Title 11 of the Delaware Code by striking said subsection in its entirety, and by substituting in lieu thereof the following:

- “(b) Notwithstanding any provisions of this Section or Code to the contrary, any person convicted of robbery in the first degree shall receive a minimum sentence of:
- (1) three (3) years at Level V; or
  - (2) five (5) years at Level V, if the conviction is for an offense that was committed within ten (10) years of the date of a previous conviction for robbery in the first degree or any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to such offense, or if the conviction is for an offense that was committed within ten (10) years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for robbery in the first degree or for any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to such offense, whichever is the later date.”.

Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this Title.

Section 7. Amend § 1448(e) of Title 11 of the Delaware Code by striking said subsection in its entirety, and by substituting in lieu thereof the following:

- “(e) Notwithstanding any provision of this Section or Code to the contrary, any person who is a prohibited person as described in this Section and who knowingly possesses, purchases, owns, or controls a firearm or destructive weapon while so prohibited shall receive a minimum sentence of:
- (1) one (1) year at Level V, if the person has previously been convicted of a violent felony;
  - (2) three (3) years at Level V, if the person does so within ten (10) years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or
  - (3) five (5) years at Level V, if the person has been convicted on two or more separate occasions of any violent felony.

Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this Title. For the purposes of this subsection, “violent felony” means any felony so designated by § 4201(c) of this Title, or any offense set forth under the laws of the United States, any other state or any territory of the United States

which is the same as or equivalent to any of the offenses designated as a violent felony by § 4201(c) of this Title.”.

Section 8. Amend § 4201(c) of Title 11 of the Delaware Code by inserting between the phrases “1447A Possession of a Firearm During the Commission of a Felony” and “1455 Engaging in a Firearms Transaction on Behalf of Another (Subsequent Offense)” the following:

“1448(e) Possession of a Deadly Weapon by Persons Prohibited (Firearm or Destructive Weapon Purchased, Owned, Possessed or Controlled by a Violent Felon).”.

Section 9. Amend § 4205(b)(2) of Title 11 of the Delaware Code by striking the phrase “20 years” as it appears therein, and by substituting in lieu thereof the phrase “25 years”.

Section 10. Amend § 4205(b)(3) of Title 11 of the Delaware Code by striking the phrase “10 years” as it appears therein, and by substituting in lieu thereof the phrase “15 years”.

Section 11. Amend § 6712(b) of Title 11 of the Delaware Code by adding a new paragraph “(3)” thereto, to read as follows:

“(3) Burglary in the Second Degree, as set forth in § 825 of Title 11, but only if the defendant has not previously been convicted of Burglary in the Second Degree or Burglary in the First Degree, as set forth in § 826 of Title 11.”.

Section 12. Amend Subsections (d), (e) and (h) of § 6712 of Title 11 of the Delaware Code by striking the phrase “§ 4205 of this Title” as it appears variously therein, and by substituting in lieu thereof the phrase “§ 825, § 826 or § 4205 of this Title”.

Section 13. Amend Subparagraphs (a)(1)a., (a)(2)a., (a)(4)a., (a)(5)a., (a)(6)a., (a)(7)a., and (a)(9)a. of § 4753A of Title 16 of the Delaware Code by striking the phrase “3 years” as it appears variously therein, and by substituting in lieu thereof the phrase “2 years”.

Section 14. Amend Subparagraphs (a)(1) b., (a)(2) b., (a)(4) b., (a)(5) b., (a)(6) b., (a)(7) b., and (a)(9) b. of § 4753A of Title 16 of the Delaware Code by striking the phrase “5 years” as it appears variously therein, and by substituting in lieu thereof the phrase “4 years”.

Section 15. Amend Subparagraphs (a)(1) c., (a)(2) c., (a)(4) c., (a)(5) c., (a)(6) c., (a)(7) c., and (a)(9) c. of § 4753A of Title 16 of the Delaware Code by striking the phrase “15 years” as it appears variously therein, and by substituting in lieu thereof the phrase “8 years”.

Section 16. Amend § 4753A(a)(2) of Title 16 of the Delaware Code by striking the phrase “5 grams” as it appears therein, and by substituting in lieu thereof the phrase “10 grams”.

Section 17. Amend § 4753A(a)(2) a. of Title 16 of the Delaware Code by striking the phrase “5 grams” as it appears therein, and by substituting in lieu thereof the phrase “10 grams”.

Section 18. Amend § 4763(a) of Title 16 of the Delaware Code by striking the first sentence of said subsection in its entirety, and by substituting in lieu thereof the following:

“(a) *Previous convictions.* – In any case in which a defendant has previously been convicted of any offense set forth in §§ 4751, 4752, 4753A or 4761 of this Title, or of any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to any of such offenses, the penalties set forth in §§ 4751 – 4761 of this Title shall be increased as follows:”.

Section 19. Amend § 4763(a)(1) of Title 16 of the Delaware Code by striking the phrase “Subject to paragraph (3) of this subsection,” as it appears in the first sentence of said paragraph.

Section 20. Amend § 4763(a)(2) of Title 16 of the Delaware Code by striking the phrase “Subject to paragraph (3)” as it appears in the first sentence of said paragraph.

Section 21. Amend § 4763(a)(1) of Title 16 of the Delaware Code by striking subparagraphs c. and d. of said paragraph in their entirety, and by substituting in lieu thereof the following:

“c. § 4751 (excepting heroin or any mixture containing heroin) or § 4752, five (5) years.

d. § 4751 (heroin or any mixture containing heroin), ten (10) years.

Section 22. Amend § 4763(a)(2) of Title 16 of the Delaware Code by striking Subparagraphs a. and b. of said paragraph in their entirety, and by substituting in lieu thereof the following:

“a. § 4751 (excepting heroin or any mixture containing heroin) or § 4752, 3 years.

b. § 4751 (heroin or any mixture containing heroin), 5 years.”.

Section 23. Amend § 4763(a)(3) of the Delaware Code by striking said paragraph in its entirety.

Section 24. Amend § 4763 of Title 16 of the Delaware Code by adding a new Subsection “(d)” thereto, to read as follows:

“(d) *Substance abuse treatment* – Notwithstanding any provision of this Section, Title or Code to the contrary, the Department of Correction shall have the authority and discretion during the last 180 days of any Level V sentence imposed pursuant to this Chapter to place the defendant at Level IV.”.

Section 25. Amend § 921(2) a. of Title 10 of the Delaware Code by inserting between the phrases “unlawful sexual intercourse in the first degree,” and “kidnapping in the first degree” as they appear therein the following:

“assault in the first degree, robbery in the first degree.”.

Section 26. Amend § 921(2) b. of Title 10 of the Delaware Code by striking the phrase “robbery in the first or second” as it appears therein, and by substituting in lieu thereof the phrase “robbery in the second degree”.

Section 27. Amend § 1009 of Title 10 of the Delaware Code by adding a new Subsection “(k)” thereto, to read as follows:

“(k) Subject to the provisions governing amenability pursuant to § 1010 of this Title, the Court shall commit a delinquent child to the custody of the Department of Services for Children, Youth and Their Families if the child who has been adjudicated delinquent by this Court of one (1) or more offenses which would constitute either Possession of a Firearm During the Commission of a Felony or Robbery First Degree (where such offense involves either the display of a deadly weapon or the infliction of serious physical injury upon any person who was not a participant in the crime) were the child charged as an adult under the laws of this State. Such child is declared a child in need of mandated institutional treatment, and this Court shall commit the child so designated to the Department of Services for Children, Youth and Their Families for at least a twelve (12) month period of institutional confinement.”.

Section 28. Amend § 1010(a)(1) of Title 10 of the Delaware Code by inserting between the phrases “rape in the second degree” and “or kidnapping in the first degree” as they appear therein the following:

“, assault in the first degree, robbery in the first degree”.

Section 29. Amend § 4205 of Title 21 of the Delaware Code by creating a new Subsection “(c)” thereto to provide as follows:

- “(c) (1) For offenses under this Title, except those which involve injury or death caused to another person by the person's driving or operation of the vehicle or which involve a driving under the influence-related conviction or offense as defined in § 4177B(e)(1) a. –d., the terms of imprisonment defined in this Title may be served at Supervision Accountability Level IV as defined in § 4204(c)(4) of Title 11.
- (2) For offenses under this Title which involve injury caused to another person by the person's driving or operation of the vehicle or a driving under the influence-related conviction or offense as defined in §4177B(e)(1)a.–d., any term of imprisonment defined in this Title shall be served at Supervision Accountability Level V as defined in §4204(c)(5) of Title 11 or at Supervision Accountability Level IV as defined in §4204(c)(4) of Title 11 provided that such Level IV placement must be served in a Department of Correction facility which requires full-time

residence at the facility and that the person may not be outside the confines of that facility without armed supervision.

- (3) For offenses under this Title which involve death caused to another person by the person's driving or operation of the vehicle any term of imprisonment defined in this Title shall be served at Supervision Accountability Level V as defined in § 4204(c)(5) of Title 11.”.

Section 30. Amend § 2756(a) of Title 21 of the Delaware Code by striking the phrase “from a violation of § 4177 of this Title or a local ordinance substantially conforming thereto,” and by inserting in lieu thereof the following:

“from a prior or previous driving under the influence-related conviction or offense as defined in § 4177B(e)(1)a. –d. of this Title.”.

Section 31. Amend § 2756(b) of Title 21 of the Delaware Code by striking the second sentence thereto in its entirety and by inserting in lieu thereof the following:

“In addition, for any offense under this Section, if the suspension or revocation resulted from a violation of any criminal statute pertaining to injury or death caused to another person by the person's driving or operation of a vehicle or a driving under the influence-related conviction or offense as defined in § 4177B(e)(1) a. –d. of this Title, the minimum fine shall be \$2,000 and shall not be subject to suspension and the minimum period of imprisonment shall not be subject to suspension but shall, notwithstanding any provision of this Section or Title to the contrary, be served subject to the provisions of § 4205(c)(2) of this Title.”.

Section 32. Amend § 2810 of Title 21 of the Delaware Code by striking the sentence “The periods of imprisonment required under this Section shall not be subject to suspension.” as it appears therein, and by substituting in lieu thereof the following:

“The periods of imprisonment required under this Section shall not be subject to suspension and if the judgment of the Court prohibiting the operation of a motor vehicle was based in whole or in part upon a conviction of the person for a prior or previous driving under the influence-related conviction or offense as defined in § 4177B(e)(1) a. –d., or in whole or in part upon a conviction under any criminal statute pertaining to injury or death caused to another person by the person's driving or operation of a vehicle, the period of imprisonment shall, notwithstanding any provision of this Section or Title to the contrary, be served subject to the provisions of § 4205(c)(2) of this Title.”.

Section 33. Amend Section 1010(a)(3) of Title 10 of the Delaware Code by striking the phrases “assault first degree” and “robbery first degree” as they appear therein.