

# Delaware's House Bill 210

A Trade off of  
Lighter Drug Trafficking and Repeat Drug Selling Sentences for Harsher  
Sentences for Serious Person and Property Crimes



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Prepared by the  
**State of Delaware**  
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Lighter Drug Trafficking and Repeat Drug Selling Sentences for  
Harsher Sentences for Serious Person and Property Crimes

Prepared by the Statistical Analysis Center, Office of Management and Budget, State of  
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Tradeoff of  
Lighter Drug Trafficking and Repeat Drug Selling Sentences for  
Harsher Sentences for Serious Person and Property Crimes  
Executive Summary

Dave Swayze, Chair  
Delaware Sentencing Research and Evaluation Committee

In terms of criminal justice policy, House Bill 210 is surpassed in importance only by such changes as the establishment of the Sentencing Accountability Commission in 1987 (SENTAC) and Truth in Sentencing in 1990. When House Bill 210 became law on June 30, 2003 the expectation was that the impact of the significant reductions in the controversial drug trafficking and repeat drug selling mandatory sentences would be offset by the increased penalties for serious crimes such as Robbery 1<sup>st</sup>, Assault 1<sup>st</sup>, Burglary 1<sup>st</sup>, and Burglary 2<sup>nd</sup>. It was estimated that initially there would be a short-term savings due to the decrease in the number of Department of Correction (DOC) beds used for drug dealers and that over the long-run more beds would be needed for the longer violent offenders' terms. Eventually the combination of the shorter drug and longer violent crime sentences would result in a bed neutral DOC impact.

This goal would have been met, if all other things besides sentence length had remained constant between 2003 and 2007. However, as this study documents, criminal justice practice and crime volume shifts cannot always be anticipated resulting in unexpected outcomes. The initial HB 210 study (DeISAC, October 2005) showed a significant decrease in the need for DOC beds. At this early stage, not only were 298 DOC beds saved due to shorter drug selling sentences, but also fewer than expected Robbery 1<sup>st</sup> Degree cases received the new 3-year minimum term, resulting in an additional 57 DOC bed savings. Overall in the initial phases of HB 210 there was a surprising 355 bed savings. This bed savings contributed to the no-growth period in the DOC prison population in 2003 and 2004.

In this follow-up study, the 2006 HB 210 sentence lengths – longer for violent crimes and shorter for drug selling – for the most part conformed to the new law. However, instead of a bed saving as was initially experienced, or a bed neutral result that was originally expected, by 2006 – 2007 there was a need for at least 338 more DOC beds. This increased bed demand was caused more by changes in crime volume, conviction rates and plea-bargaining than deviations from the expectations for HB 210. Of special note is the significant increase in the use of habitual sentences in place of the shorter HB 210 drug sentences. While there was speculation that this might happen, this is the first documentation that such a change actually occurred. These changes since 2004, many of them unanticipated, contributed to the increased 2006 and 2007 DOC prison populations. Brief summaries of the complex changes associated with HB 210 cases are provided below prior to the report's detailed analysis.

## 2008 Quick Summary of HB 210's Impact

- Robbery 1<sup>st</sup> minimum sentence increased with HB 210 from 2 to 3 years,**
- and the conviction rate increased,**
- and the number of charges rebounded to a new high in 2007,**
- resulting in an 85 DOC bed impact by 2007.**

In 2004, the first year of HB 210, there was an unexpected 112 DOC HB 210 bed savings related to the lower than expected number of Robbery 1<sup>st</sup> convictions resulting in the new longer 3-year minimum prison term and more than expected number of charges being pled instead to shorter Robbery 2<sup>nd</sup> jail terms.

In 2006 and 2007 the overall conviction rate for Robbery 1<sup>st</sup> charges increased compared to 2004, contributing to an 85 DOC bed impact instead of a 112 bed savings. This reversal is due in part to the increase in the overall Robbery 1<sup>st</sup> conviction rate from 33.9 percent in 2004 to 46.1 percent in 2006. Robbery 1<sup>st</sup> charges resulting in a Robbery 1<sup>st</sup> conviction increased from 15.7 percent in 2004 to 21.4 percent in 2006. This group is subject to the HB 210 3-year minimum terms and when combined with increased convictions explain a significant proportion of the increased DOC bed need for robbery inmates. Robbery 1<sup>st</sup> charges pled to Robbery 2<sup>nd</sup>, most of which receive a jail term of less than one year or probation, also increased from 15.5 percent in 2004 to 22.8 percent in 2006.

The volume of Robbery 1<sup>st</sup> charges decreased in 2006, but is on a record pace for 2007 offsetting any hope that the lower volume of Robbery 1<sup>st</sup> charges would offset a higher conviction rate and longer lengths of stay. Robbery 1<sup>st</sup> degree charges declined to a low of 583 in 2006 from 747 in 2004, but in the first 10 months of 2007 755 Robbery 1<sup>st</sup> charges have already been disposed in Superior Court.

**Assault 1<sup>st</sup> increased in severity under HB 210 from a Felony C to a Felony B with a new 2-year minimum term.**

- This increased penalty resulted in fewer Assault 1<sup>st</sup> charges being convicted of an Assault 1<sup>st</sup> but more being pled to Assault 2<sup>nd</sup>.**
- With the tougher penalty, Assault 1<sup>st</sup> became a more preferred plea for Attempted Murder 1<sup>st</sup>,**
- The increase in the volume of Assault 1<sup>st</sup> charges, and not the increase in length of stay, is the main cause of the 63 DOC bed impact.**

Before HB 210 became law in 2003, 16.4 percent of the Assault 1<sup>st</sup> charges resulted in an Assault 1<sup>st</sup> conviction but by 2006 only 5.3 percent of these charges resulted in an Assault 1<sup>st</sup> conviction. It is far more likely under HB 210 that Assault 1<sup>st</sup> charges will be pled to Assault 2<sup>nd</sup> because of the threat of the HB 210 2-year minimum sentence. Prior to HB

210, 12.1 percent of the Assault 1<sup>st</sup> charges were convicted of Assault 2<sup>nd</sup> but by 2006 24 percent of these charges resulted in an Assault 2<sup>nd</sup> conviction.

Also after HB 210 became law, the percent of Assault 1<sup>st</sup> convictions that were originally Attempted Murder 1<sup>st</sup> increased from 4 to 9 percent of all Assault 1<sup>st</sup> charges. Attempted Murder 1<sup>st</sup> carries a 15 year minimum term upon conviction compared to the 2 year minimum for HB 210 Assault 1<sup>st</sup>. The charging patterns for Attempter Murder 1<sup>st</sup> cases are very complex often including charges for associated violent crimes. In many situations the Attempted Murder 1<sup>st</sup> charge is nol-prossed for a plea that includes a firearm charge, other violent crimes and now more frequently under HB 210 Assault 1<sup>st</sup>. These pleas typically result in a Level V incarceration ranging from 5 to 15 years.

Under HB 210, in spite of the establishment of the tougher 2-year minimum term, sentence lengths for Assault 1<sup>st</sup> cases that result in Assault 1<sup>st</sup> or 2<sup>nd</sup> convictions have remained fairly steady. On the other hand, the volume of overall Assault 1<sup>st</sup> charges has increased and this has resulted in a 63 DOC bed impact. The number of cases with Assault 1<sup>st</sup> charges has increased from a low of 103 in 2004 to 171 in 2006 and already in the first 10 months of 2007 the counts are again 20 percent higher over 200.

### **Burglary 1<sup>st</sup> and 2<sup>nd</sup> under HB 210 acquired new 2-year and 1-year minimum sentences.**

- **The overall conviction rate for Burglary 1<sup>st</sup> and 2<sup>nd</sup> charges increased,**
- **which when combined with the increase in burglary charges results in a 170 DOC bed impact.**

Burglary 1<sup>st</sup> and 2<sup>nd</sup> acquired minimum terms under HB 210 of 2-years and 1-year respectively. It might be expected that the tougher burglary minimums would result in an increase in the number of pleas to the most serious burglary statute without a minimum term -- Burglary 3<sup>rd</sup>. This occurred for Assault 1<sup>st</sup> when the penalties increased and initially for Robbery 1<sup>st</sup>. Interestingly it also occurs for HB 210 burglary laws, as Burglary 3<sup>rd</sup> convictions also increase. While conviction rates increased for Burglary 3<sup>rd</sup>, they also remained constant for Burglary 1<sup>st</sup> and 2<sup>nd</sup> resulting in an overall increase in the conviction rate for Burglary 1<sup>st</sup> and 2<sup>nd</sup> charges following the implementation of HB 210.

While an increasing conviction rate and longer lengths of stay for Burglary 1<sup>st</sup> and 2<sup>nd</sup> partially explain the increased need for DOC beds, the greatest influence on the need for DOC burglary beds has been the increase in the volume of burglary charges. The volume of Burglary 1<sup>st</sup> and Burglary 2<sup>nd</sup> charges increased from 831 in 2002 to 1,292 in 2006, an increase of 55 percent.

Under HB 210 Drug Trafficking and Repeat Possession With the Intent to Deliver minimum sentences decreased respectively to 2-years and 3-years.

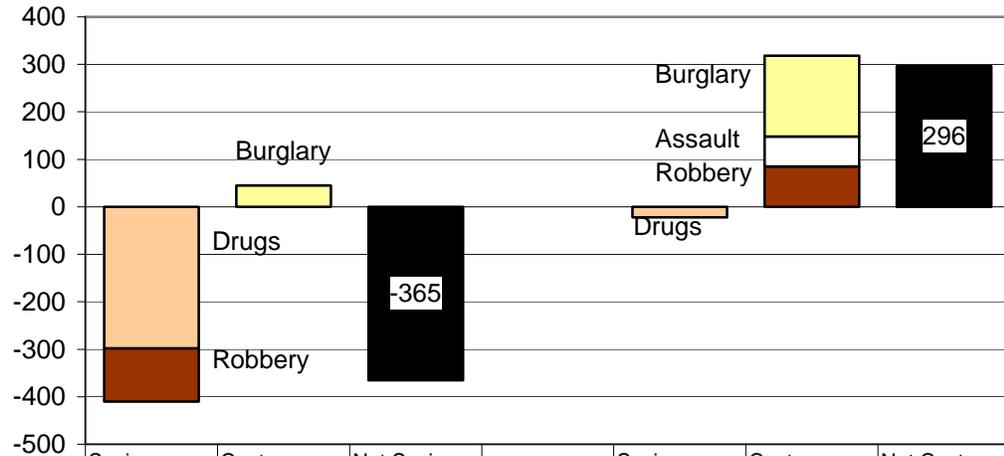
- The decrease in sentence length for drug selling has been offset in part by an increase in the number of habitual offender sentences, and
- the increase in the number of drug selling cases;
- combined these changes result in only a very small DOC bed savings of 22 instead of 298.

The shorter drug selling sentences prescribed in HB 210 have been adhered to, except for the increased use of habitual offender declaration for these types of offenders. As the minimum sentence length for drug selling decreased under HB 210, the number of habitual sentences increased. In 2002, the DOC bed impact for drug offenders with a habitual offender declaration was 25, while in 2006 it was 119 -- almost a five-fold increase.

The HB 210 reductions in sentence lengths for drug selling initially resulted in a 298 DOC beds savings. The 3-year minimum mandatory terms for 5 grams of cocaine was replaced with a 2-year (with a possible 6-month reduction at the end of the term for Level IV placement) for possession of 10 grams of cocaine. For the higher weights of drug possession, the minimum trafficking penalties have been reduced from 5 and 15 years to 4 and 8 years. Secondly, the repeat Possession With the Intent to Deliver (PWITD) was reduced from 5 to 3-years year (with a possible 6-month reduction at the end of the term for Level IV placement).

However, since the initial 2004 findings showing a 298 DOC bed savings, there has been a significant increase in drug selling charges (trafficking and PWITD). In 2002 there were 546 charges with convictions and in 2006 there were 823, a 54 percent increase. This increase in conviction volume has offset set the decrease in sentence lengths such that instead of a 298 DOC bed savings we are now experiencing a DOC beds savings of only 22. The combined effects of increased volume and the increased use of habitual offender sentences has to a large extent eliminated DOC bed savings expected for the shorter HB 210 drug selling sentences.

**Summary of HB 210 DOC Bed Impact: 2004 vs 2006**  
**Increases in Crime and Conviction Rates Cause DOC Bed Impact**



	Savings	Cost	Net Saving		Savings	Cost	Net Cost
	2004				2006		
■ HB 210 Net			-365				296
■ Burglary		45				170	
■ Assault		0				63	
■ Robbery	-112					85	
■ Drugs	-298				-22		

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# An Analysis Of The Tradeoff Of Lighter Drug Dealing Sentences For Harsher Sentences For Serious Crimes Against Persons and Property

## HB 210 Background

This report presents a second analysis of the 142<sup>nd</sup> General Assembly’s House Bill 210, which became law on June 30, 2003. HB 210 made numerous significant changes in Delaware’s criminal code, increasing penalties for several serious crimes against persons and property while decreasing penalties for most drug trafficking and repeat distribution offenses. Changes were also made in sentences for driving under the influence and certain weapon offenses. It was intended that prison bed increases resulting from harsher penalties for person and property crimes would be offset by reduced drug sales penalties, thereby making the bill bed-neutral as a package.

In the first analysis of HB 210’s impact (DeSAC, October 2005), findings showed that original assumptions regarding the bill’s implementation did not hold. In practice, cases involving crimes with increased mandatory terms resulted in pleas to lesser charges in higher percentages than predicted. Coupling that observation with decreased sentences for drug dealing led to a revised projection that application of the bill could actually result in a bed use reduction. A caveat to that projection was that changes in criminal behavior and/or prosecution could change directions of early trends.

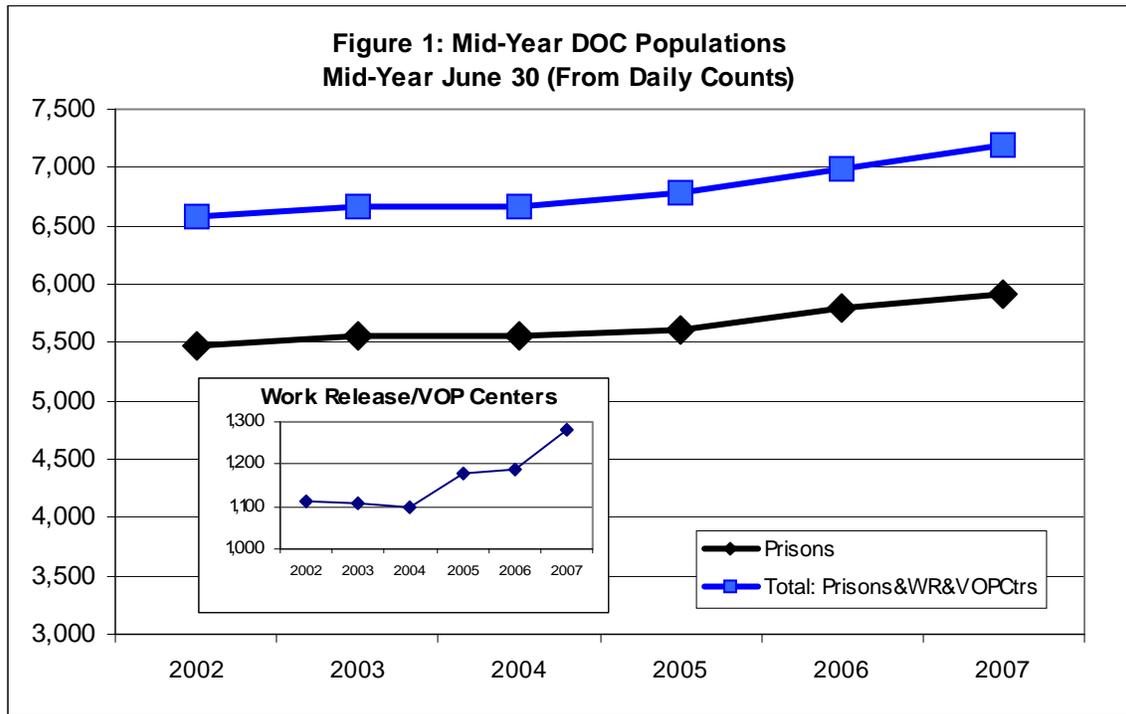
In this update of the impact of HB 210, convictions and sentences for drug trafficking and possession with intent to deliver, Robbery 1<sup>st</sup>, Assault 1<sup>st</sup>, Burglary 1<sup>st</sup> and Burglary 2<sup>nd</sup> Degree are examined. As planned in the bill, sentence lengths for trafficking and repeat drug selling have decreased significantly while Robbery 1<sup>st</sup>, Assault 1<sup>st</sup>, Burglary 1<sup>st</sup> and Burglary 2<sup>nd</sup> sentences have increased, but coinciding changes in conviction volume have confounded the intent to maintain Department of Correction (DOC) bed neutrality.

If the number of convictions had remained constant from 2002 to 2006, this new law would have come very close to DOC bed neutral, with decreases in beds being used for repeat drug selling and trafficking cases and increases in penalties for robbery, assault, and burglary. However, following a net increase in Superior Court convictions of 20 percent, the result thus far is that between 2002 and 2006 there has been about an 80 to 100-bed increase related to these types of charges. Table 1 shows the changes from 2002 to 2006 in Superior Court convictions by crime group for charges analyzed in this study.

Table 1. Changes in Superior Court conviction counts from 2002 to 2006 for selected HB 210 crime groups					
Charge Type	Robbery 1 <sup>st</sup>	Assault 1 <sup>st</sup>	Burglary 1 <sup>st</sup>	Burglary 2 <sup>nd</sup>	Drug Sales & Trafficking
2002 to 2006 % Difference	- 13 %	+ 27 %	0 %	+ 30 %	+ 30 %
<i>Note: Counts are by charge, and include convictions on original and lesser-included charges. The decline in Robbery 1<sup>st</sup> reflects a short-term drop in 2006; counts increased in 2007.</i>					

For a short time after HB 210 became law, the state’s DOC population was uncommonly stable. But that stabilization period was quite brief, as seen in Figure 1. Mid-year total facility populations were virtually unchanged from 2003 to 2004. An increase of slightly less than 2 percent occurred in the 2004 to 2005 period, but facility population increases of about 3 percent in 2006 and 2007 left little cause for hope of any lasting stability.

After a short period of flattening, it appears that DOC’s population growth has moved back toward the trend established over the past decade or so. From mid-2003, when HB 210 was enacted, to mid-2007, DOC’s total facility population increased by 8 percent. Populations in prison facilities increased by 6.5 percent, while work release and Violation of Probation (VOP) Centers had an increase of 15.4 percent.



Several other policy and statutory changes were implemented around the same time as HB 210, so it is difficult to attribute population shifts directly to specific causes. Among the list of concurrent factors with potential impact on DOC bed needs were Delaware’s increased early releases from prison, probation reform under Senate Bill 50, and the federal government’s more aggressive prosecution of gun crimes. It should be noted that correctional populations are also affected by socioeconomic, demographic, and other factors over which the criminal justice system has limited or no influence.

What follows is an estimate of the impact of HB 210 changes within key crime groups based on biennial data from 2002 to 2006. A glimpse at preliminary data from 2007 is provided where projections should be regarded with particular caution due to a rapidly changing criminal justice environment.

## Key HB 210 Changes Considered In This Study

This analysis focuses on a selection of HB 210 changes, ones that involved crimes of sufficient frequency and sentence length to cause noticeable impact on DOC bed needs. Listed below is an overview of the most influential HB 210 changes in that regard.

### Class B felony

Maximum Level V term increased from 20 to 25 years. (Rarely applied, but long-term impact could be appreciable.) The default minimum is 2 years at Level V.

### Robbery 1<sup>st</sup> Degree (felony B)

Increase of baseline minimum Level V term from 2 to 3 years, or from 4 to 5 years if within 10 years of previous conviction and incarceration for Robbery 1<sup>st</sup>.

### Assault 1<sup>st</sup> Degree (felony B)

Offense grade changed from felony C (having only a SENTAC presumptive Level V term) to felony B, raising the minimum sentence to 2 years at Level V.

### Burglary 1<sup>st</sup> Degree (felony C, felony B if injury is caused to person 62 years or older)

Changed from no minimum in felony C case to minimum of 2 years Level V for baseline, or 4 years if within 5 years of previous conviction and incarceration for Burglary 1<sup>st</sup> or 2<sup>nd</sup>.

### Burglary 2<sup>nd</sup> Degree (felony D, felony C if injury is caused to person 62 years or older)

Previously no minimum, changed to minimum of 1 year Level V for baseline, or 3 years if within 5 years of previous conviction and incarceration for Burglary 1<sup>st</sup> or 2<sup>nd</sup>. Added Burglary 2<sup>nd</sup> to the list of Boot Camp diversion-eligible charges, but only when defendants had no prior conviction for Burglary 1<sup>st</sup> or 2<sup>nd</sup> degree.

### Drug Trafficking (felony B)

Minimum trafficking weight for cocaine increased from 5 to 10 grams. Minimum Level V terms were reduced from 3 years to 2 years, from 5 years to 4 years, and from 15 years to 8 years for the three-weight/dosage tiers set for most substances. Designer drugs were not included in HB 210's trafficking penalty reductions, but subsequent legislation shortened those to the 2, 4, and 8 year terms also. Penalties were not reduced for trafficking in heroin.

### Possession With Intent To Deliver (primarily felony C or E); additional penalties

Virtually all minimum terms for possession with intent to deliver stem from provisions in Title 16 § 4763 for repeat offenses. HB 210 changed § 4763 to limit prior drug conviction prerequisites for enhanced penalties to possession with intent to deliver, trafficking, or distribution to persons under 21, eliminated the 15-year minimum for repeat convictions of possession with intent to deliver, and reduced the enhanced minimum for possession with intent to deliver narcotics from 5 years to 3 years (except for heroin, which remained at 5 years).

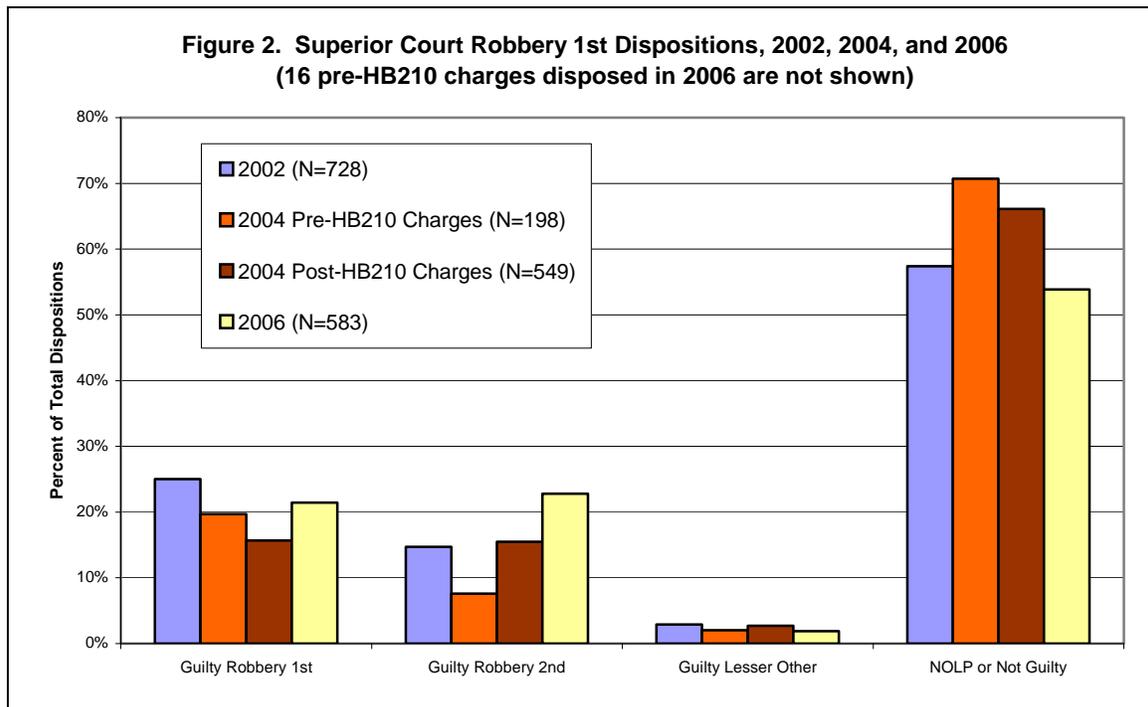
### Reduced penalties for drug offenses

Another change to Title 16 § 4763 gave DOC authority and discretion to place inmates serving Level V sentences for drug offenses at Level IV during the last 180 days of their Level V term, ostensibly for the purpose of substance abuse treatment.

## Robbery 1<sup>st</sup> Degree

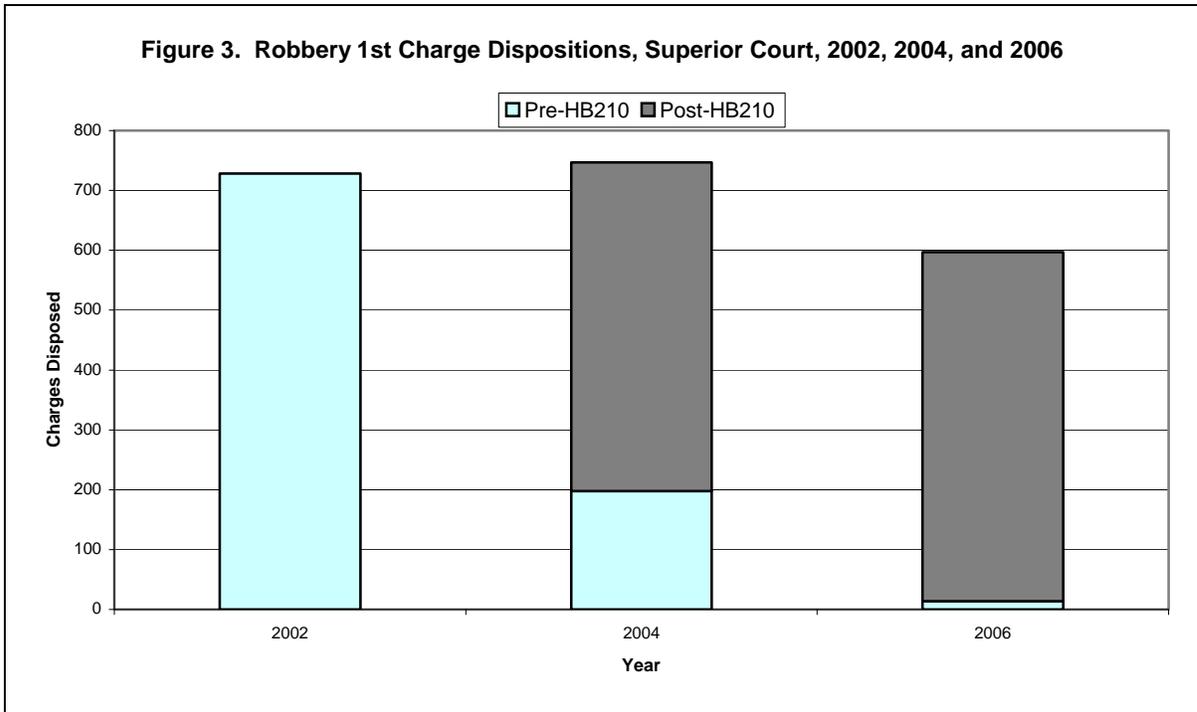
An unexpected finding in the October 2005 HB 210 analysis was that, in proportion to original charges, Robbery 1<sup>st</sup> convictions decreased significantly after minimum terms were increased from two to three years. Disposition volumes in 2002 and 2004 were stable, but there was a significant drop in the percentage of convictions on Robbery 1<sup>st</sup> charges, as shown in Figure 2. In DOC bed impact calculations, the conviction decline was large enough to offset the increased minimum terms, thus early projections showed a bed space reduction from the application of HB210's new three year minimum for Robbery 1<sup>st</sup> degree.

Conviction rates for original and lesser-included charges were substantially higher in 2006 than in 2004: 46.1 percent versus 33.9 percent. Sometime after 2004, as evidenced in 2006 disposition data, the proportion of Robbery 1<sup>st</sup> charges resulting in Robbery 1<sup>st</sup> convictions climbed back toward pre-HB 210 levels. The overall conviction rate on original charges of Robbery 1<sup>st</sup> (for Robbery 1<sup>st</sup> or a lesser charge) also increased from 2002 to 2006, with most of the increase coming from Robbery 2<sup>nd</sup> convictions. Prosecution practices have apparently changed since the previous review using 2004 data. Since then, the combined effects of higher conviction rates and longer average sentences have resulted in a reversal of the downward projection of Robbery 1<sup>st</sup> bed requirements made in the October 2005 report.



Though Robbery 1<sup>st</sup> conviction rates increased in 2006, charge disposition volume was down from prior years. After nearly equal levels of 728 in 2002 and 747 in 2004, the number of Robbery 1<sup>st</sup> degree charges disposed in Superior Court declined to 583 in 2006. Slightly more than one-fourth of the Robbery 1<sup>st</sup> charges disposed in 2004 were

from the pre-HB 210 period, but by 2006 only a small number of pre-HB 210 charges remained in the system. Figure 3 shows a summary of Robbery 1<sup>st</sup> disposition volume in 2002, 2004, and 2006.



Compared to estimates in the original HB 210 legislative analysis, bed impact from the bill's increased minimum for Robbery 1<sup>st</sup> was mitigated for the first few years, initially by decreased Robbery 1<sup>st</sup> conviction rates and then by decreased charge volume. Based on preliminary 2007 data, however, a significant change could be in progress.

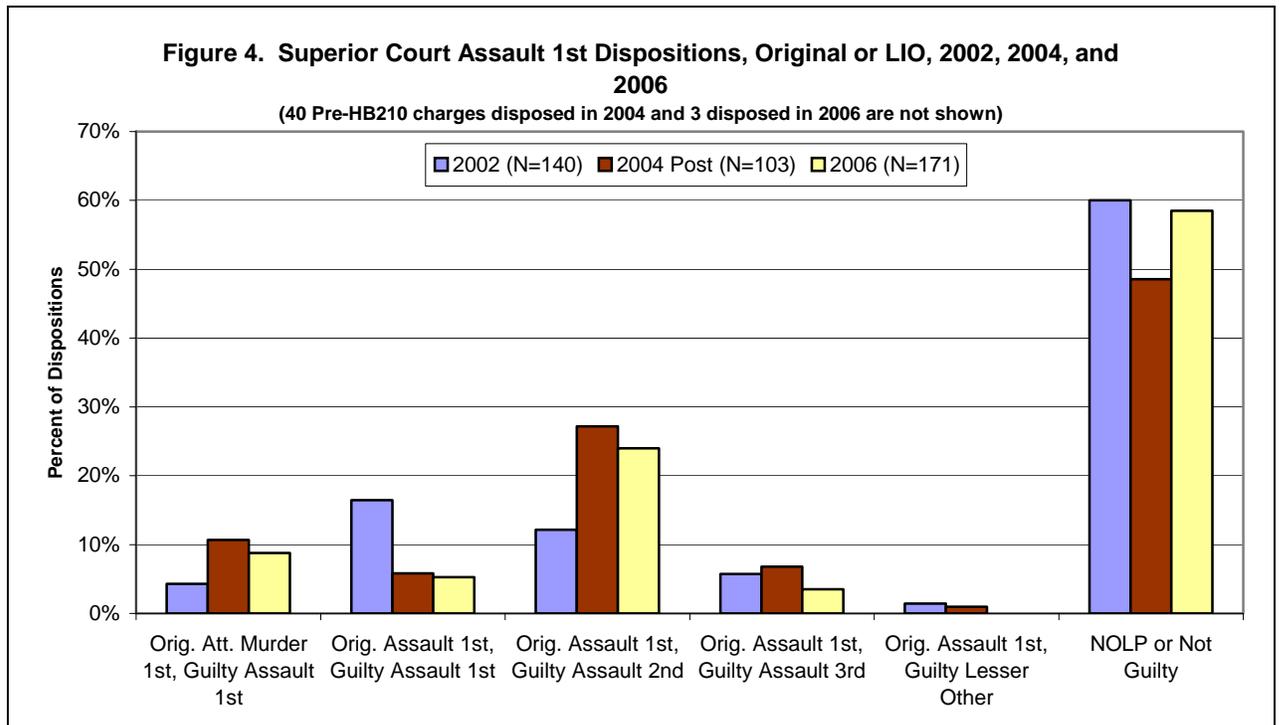
In just the first ten months of 2007, Superior Court dispositions of Robbery 1<sup>st</sup> charges have surpassed full-year levels for 2002 and 2006, reaching at least 755. Furthermore, convictions for both original charges of Robbery 1<sup>st</sup> and lesser-included charges have exceeded full-year totals for 2004 and 2006. In 2007, total convictions for Robbery 1<sup>st</sup> and its lesser-included charges are on a ten-month pace to exceed the 2002 baseline level by about 13 percent.

Current expectations are that Robbery 1<sup>st</sup> bed use will, in the near term, grow past revised projections in the October 2005 study. If charge volume remains at or near 2007 levels and prosecution trends continue, Robbery 1<sup>st</sup> bed use may soon move past the pre-HB 210 level of 665 and reach a range of 700 to 750. It may turn out that incarcerating more offenders for longer periods will eventually attenuate the robbery situation, but at present there seems to be an abundance of newcomers engaging in this crime as juveniles and young adults (DeISAC, October 2007, NCCDC and Stevenson House).

## Assault 1<sup>st</sup> Degree

Prior to the Truth in Sentencing Act of 1989, Assault 1<sup>st</sup> was a felony B, so HB 210 put the offense back to its previous grade. Since being reclassified as a felony B with a two-year minimum term in 2003, Assault 1<sup>st</sup> convictions have dropped sharply in proportion to the number of original charges. In 2002, pleas to Assault 2<sup>nd</sup> were less frequent than convictions on original charges of Assault 1<sup>st</sup>, but in 2004 and 2006 pleas to Assault 2<sup>nd</sup> were about five times more likely than convictions on original Assault 1<sup>st</sup> charges (see Figure 4).

A peculiarity can be observed in the sample years of post-HB 210 data; more Assault 1<sup>st</sup> convictions came as plea-downs from original charges of attempted Murder 1<sup>st</sup> than from original Assault 1<sup>st</sup> charges. In 2004 and 2006, plea-downs from attempted Murder 1<sup>st</sup> yielded almost twice as many Assault 1<sup>st</sup> convictions as there were from original charges of Assault 1<sup>st</sup> degree.



Assault 1<sup>st</sup> bed consumption was estimated at 52 prior to HB 210, and the bill's impact was projected to require an additional 20 beds for this crime. The 2005 follow-up study identified higher than expected plea-down rates, and impact was revised to no net gain, but a different picture arises from 2006 disposition data. Overall convictions for Assault 1<sup>st</sup> or lesser-included charges were about 27 percent higher in 2006 than in 2002, and total Assault 1<sup>st</sup> convictions in 2006 exceeded 2004 levels by over 40 percent. Estimates based on 2006 charge volume and conviction rates place Assault 1<sup>st</sup> bed use at about 115, or more than 120 percent above pre-HB 210 levels.

The high proportion of Assault 1<sup>st</sup> convictions coming from attempted Murder 1<sup>st</sup> cases complicates an already uncertain business of bed use projections. Attempted Murder 1<sup>st</sup>, a felony A, carries a minimum penalty of 15 years and a maximum of life in prison. Guilty pleas to attempted Murder 1<sup>st</sup> are uncommon. Aside from trial verdicts, attempted murder is typically pled to lesser charges, such as assault, or nol-prossed for guilty pleas to other charges.

Attempted murder often involves weapons or other serious felonies, so multiple charges with sentencing ranges similar to HB 210's revised Assault 1<sup>st</sup> are commonly present in such cases. Prosecutors therefore have a number of plea agreement options to arrive at similar sentences on different charges. The increase of Assault 1<sup>st</sup> convictions as plea-downs from attempted Murder 1<sup>st</sup> since HB 210's enactment may reflect some system readjustments to the fact that another felony B charge is in the mix of plea alternatives.

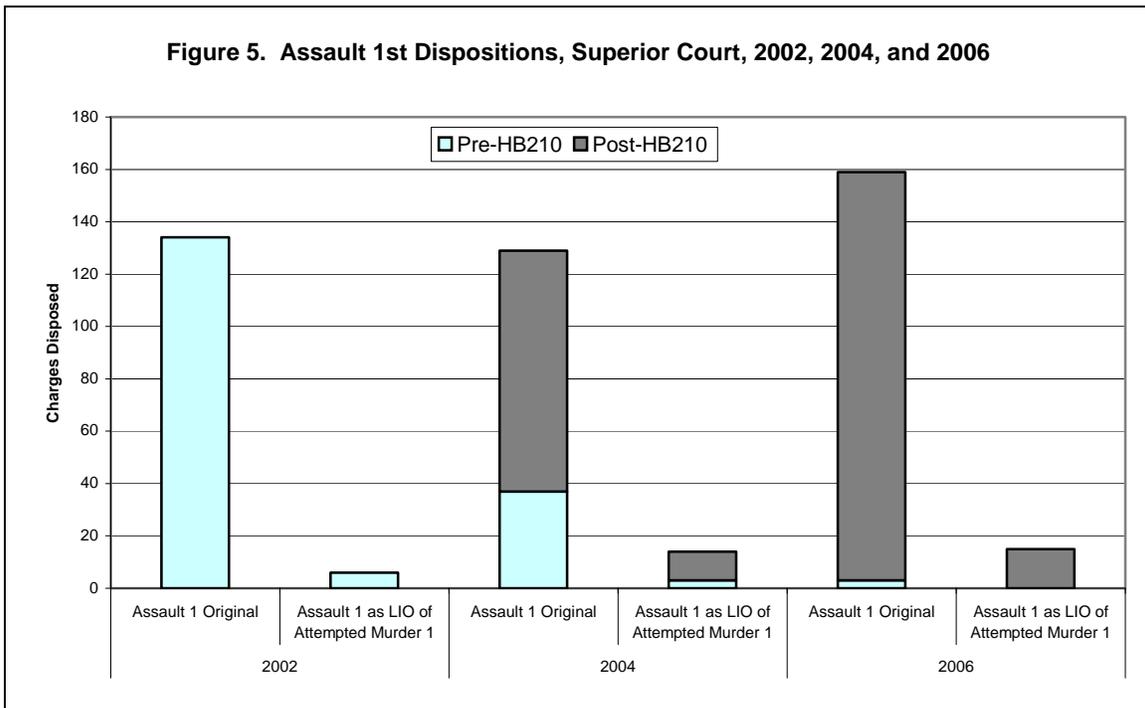
Table 2 shows a sample of conviction and sentence selections from attempted Murder 1<sup>st</sup> cases with plea agreements in 2006. Attempted Murder 1<sup>st</sup> dispositions are identified as one of three possible outcomes - pled guilty to the original charge, pled guilty to a lesser charge, or nol-prossed. If an attempted Murder 1<sup>st</sup> charge was pled to Assault 1<sup>st</sup>, guilty pleas and sentences are shown in the Assault 1<sup>st</sup> column.

Case	Total Prison (years)	Charge Dispositions and Sentences		
		Attempted Murder 1 <sup>st</sup>	Assault 1 <sup>st</sup>	Other Charges
1	25	Pled guilty to 1 count, 25 years, 2 counts nol-prossed	N/A	14 felonies (weapons, burglary, arson, assault) and 2 misdemeanors nol-prossed
2	15	Pled guilty, 15 years	N/A	3 firearm felonies nol-prossed
3	15	Pled to Assault 1 <sup>st</sup>	Pled guilty, 15 years	2 firearm felonies nol-prossed
4	13	2 counts pled to Assault 1 <sup>st</sup> , 5 counts nol-prossed	Pled guilty, 2 counts, 6 years each	Pled to Conspiracy 1 <sup>st</sup> (1 year) and Arson 1 <sup>st</sup> (Level III), 6 other felonies and 3 misdemeanors nol-prossed
5	12	Pled to Assault 1 <sup>st</sup>	Pled guilty, 5 years	Pled to Robbery 1 <sup>st</sup> (5 years) and Burglary 1 <sup>st</sup> (2 years), 3 other felonies nol-prossed
6	12	Pled to Assault 1 <sup>st</sup>	Pled guilty, 10 years	Pled to weapon felony (2 years), 1 weapon felony nol-prossed
7	9	Pled to Assault 1 <sup>st</sup>	Pled guilty, 7 years	Pled to weapon felony (2 years), kidnap and rape nol-prossed
8	7	Nol-prossed	N/A	Pled to Conspiracy 1 <sup>st</sup> (5 years), firearm felony (2 years), firearm felony nol-prossed
9	5.5	Pled to Reckless Endangering, 6 mos.	N/A	Pled to firearm felony (5 years), 2 firearm felonies nol-prossed
10	5	Nol-prossed	N/A	Pled to weapon felony (3 years) aggravated harassment (2 years) and additional weapon felony (Level IV), 3 felonies and 27 misdemeanors nol-prossed

The variety of conviction charges and sentences shown in Table 2 gives an indication of the different combinations of charges that can be selected in plea agreements. The ten cases illustrated in Table 2 were selected from cases disposed through pleas based on their sentence lengths. The sentences range from the median prison term for attempted Murder 1<sup>st</sup> cases disposed in 2006 (63 months) to 25 years, which is the maximum term for a felony B.

While there were no original Assault 1<sup>st</sup> charges present, all ten cases in Table 2 had at least one felony B in its list of original charges. Assault 1<sup>st</sup> charges appeared only as lesser included offenses of attempted Murder 1<sup>st</sup>. Any of the sentences for cases shown in Table 2 could have been given on a single count of Assault 1<sup>st</sup> or a different felony B. It seems reasonable to speculate then that the sentences for cases in Table 2 would not be much different if HB 210 had not upgraded Assault 1<sup>st</sup> to a felony B. In fact, sentences in attempted Murder 1<sup>st</sup> cases disposed in 2002, though smaller in number, are statistically similar to those from 2006.

Whatever tradeoffs may be made in attempted Murder 1<sup>st</sup> cases, increasing violent crime could have significant DOC impact if recent levels are sustained. Figure 5 shows the growth in Assault 1<sup>st</sup> charge dispositions following recent increases in arrests involving attempted Murder 1<sup>st</sup> or Assault 1<sup>st</sup> charges.

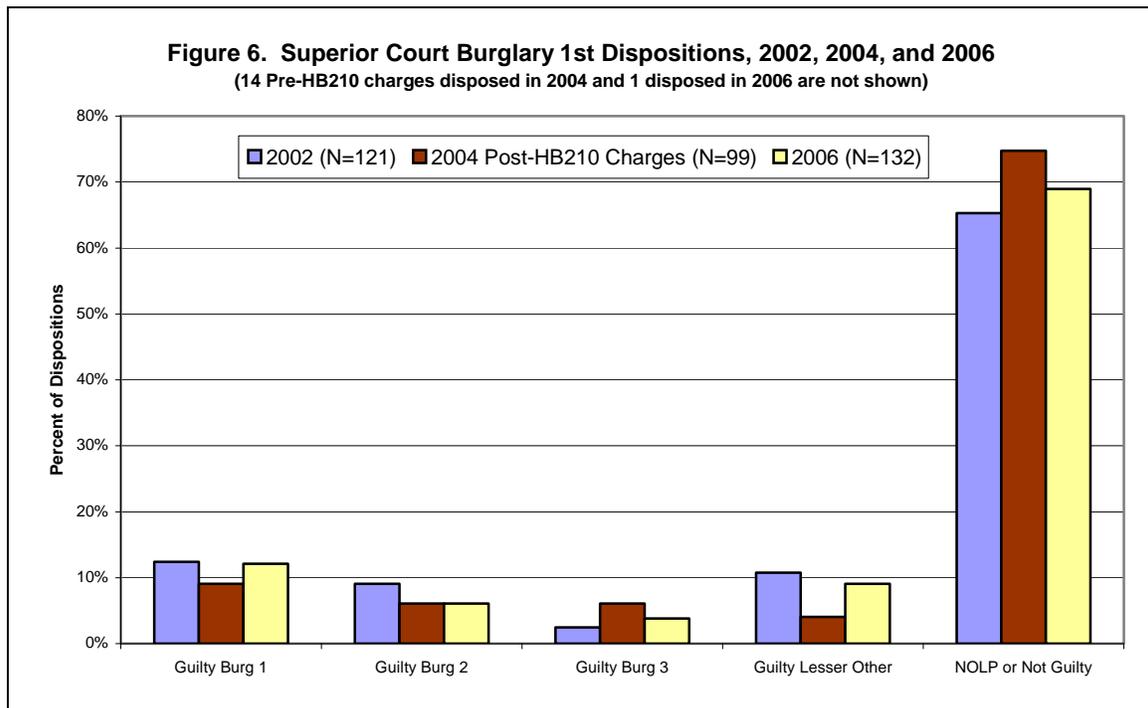


There were about 20 percent more Assault 1<sup>st</sup> charges disposed in 2006 than in 2002 or 2004. Assault 1<sup>st</sup> conviction rates have remained low enough to curtail bed use, but the system may be facing additional pressure from a rising trend of violence. In the first ten months of 2007, Assault 1<sup>st</sup> arrest charges were about 20 percent above the 2006 pace.

## Burglary 1<sup>st</sup> Degree

Under HB 210 the Burglary 1<sup>st</sup> degree penalty increased from SENTAC presumptive Level V to a statutory minimum term of 2-years. Burglary 1<sup>st</sup> degree has the lowest charge volume of any offenses in this study. In the selected years, Superior Court Burglary 1<sup>st</sup> dispositions numbered in the low hundreds annually. Conviction rates averaged about 30 percent overall, with most convictions being on reduced charges. In proportion to total Burglary 1<sup>st</sup> charges disposed, original charge convictions declined from 2002 to 2004, but then returned to near the pre-HB 210 level in 2006 (Figure 6).

Pleas from Burglary 1<sup>st</sup> to Burglary 2<sup>nd</sup> are less frequent since passage of HB 210. This is in contrast to post-HB 210 Robbery 1<sup>st</sup> and Assault 1<sup>st</sup> pleas, where there were substantial increases of pleas to 2<sup>nd</sup> degree offenses. There are no minimum terms for Robbery 2<sup>nd</sup> or Assault 2<sup>nd</sup>, but HB 210 created a one-year minimum for Burglary 2<sup>nd</sup> along with the two-year minimum for Burglary 1<sup>st</sup>. This observation offers an inkling of the complexity of interaction between statutory sentence structure and the plea-bargaining process.

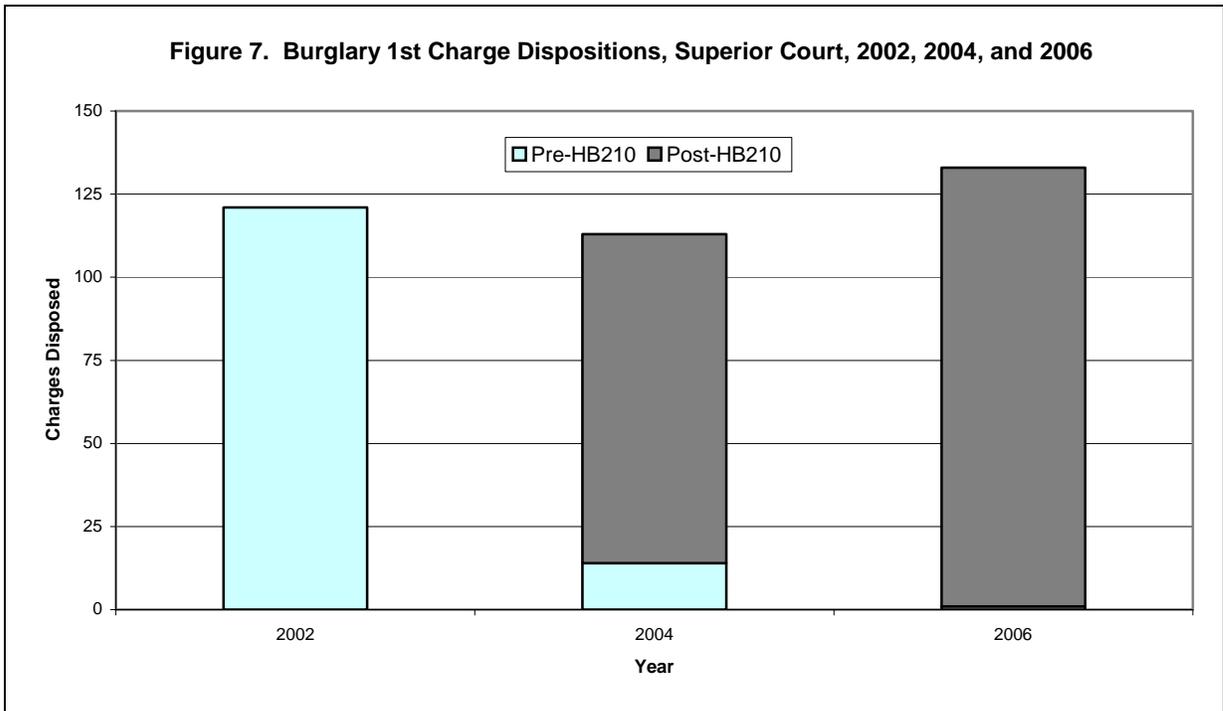


Slightly higher disposition counts in 2006 were offset by slightly lower conviction rates, and total convictions in 2006 for Burglary 1<sup>st</sup> or a lesser-included charge equaled 2002's total. An increase of Level V sentences, however, results in an estimated Burglary 1<sup>st</sup> bed impact of about 40, or 14 more than projected in the original HB 210 impact analysis.

As with Assault 1<sup>st</sup>, Burglary 1<sup>st</sup> bed impact could be overstated due to changes in plea-bargaining after the addition of a new minimum mandatory sentence. Burglary 1<sup>st</sup> degree cases typically involve weapon offenses, robbery, or other serious crimes against persons. It is common for Burglary 1<sup>st</sup> charges to be accompanied by charges of higher grades that

also carry mandatory sentences. Considering typical charge combinations, it is likely that apparent increases in Burglary 1<sup>st</sup> bed use are partly due to shifting conviction charges for offenders who would otherwise be sentenced to mandatory terms under other statutes.

Due to the combination of relatively low volume and conviction rates, Burglary 1<sup>st</sup> bed impact remains fairly low. The potential for considerably greater bed consumption can be seen in a recently increased volume of dispositions and an ample pool of charges that could result in additional convictions. Burglary 1<sup>st</sup> degree charge dispositions in 2006 were above 2002 totals by about 10 percent, and were almost 18 percent higher than 2004 counts (Figure 7).

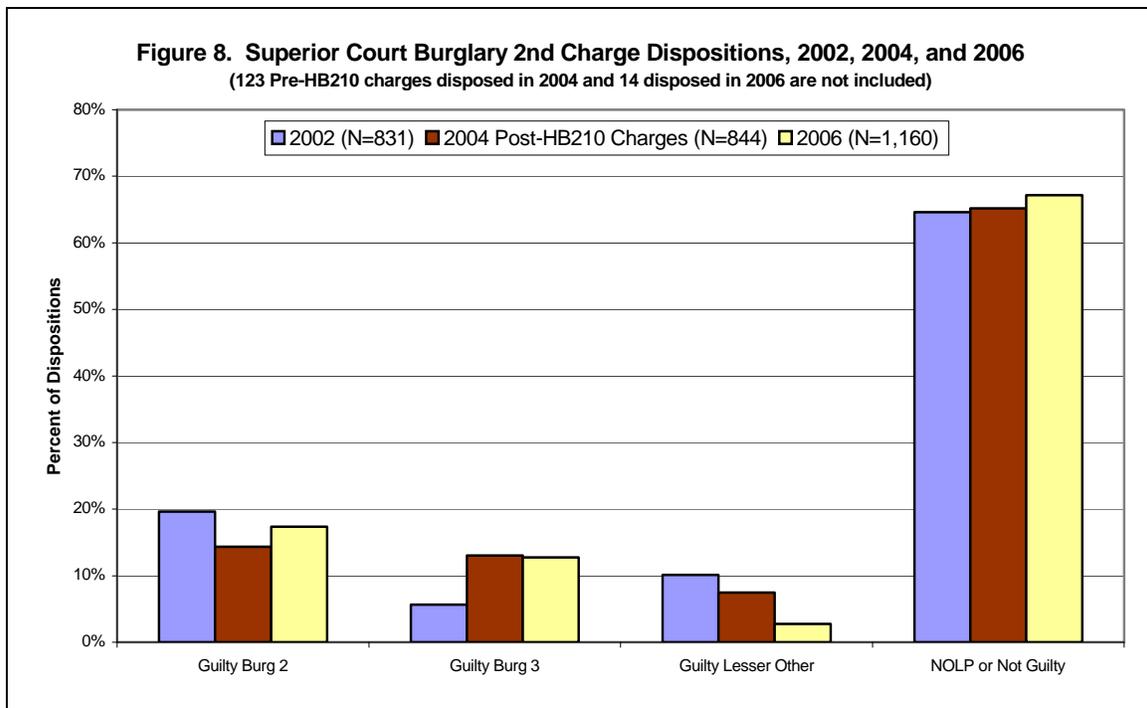


The high disposition volume in 2006 coincided with increased arrest charges for that year. Burglary 1<sup>st</sup> arrest charges in 2006 exceeded the prior five-year average by almost 40 percent, and the first ten months of 2007 are on pace to nearly equal the 2006 total. This indicates that disposition counts will be near 2006 levels for at least another year. In fact, Burglary 1<sup>st</sup> dispositions in the first ten months 2007 equaled the 2006 full-year total.

## Burglary 2<sup>nd</sup> Degree

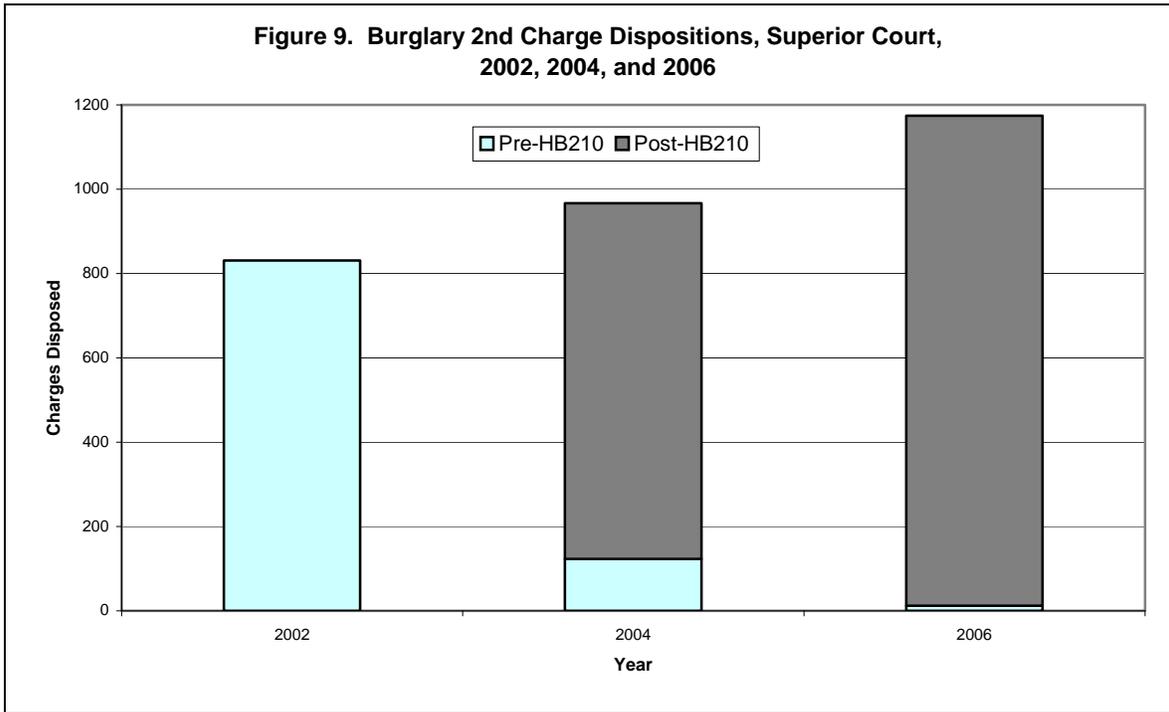
In 2004, after HB 210 created a one-year minimum sentence for Burglary 2<sup>nd</sup>, plea-downs to lesser charges increased in proportion to overall convictions (Figure 8). For 2006, the proportion of Burglary 2<sup>nd</sup> original charge convictions climbed back toward pre-HB 210 levels. In 2002, about 55 percent of Burglary 2<sup>nd</sup> convictions were on original charges; in 2006 that figure was about 53 percent. Disposition totals in 2006 were considerably higher than in 2002, so even though the proportion of original charge convictions was lower than the pre-HB 210 baseline, Burglary 2<sup>nd</sup> convictions in 2006 exceeded the 2002 total by about 23 percent.

The original HB 210 analysis projected an impact of from 45 to 75 DOC beds due to changes in Burglary 2<sup>nd</sup> degree sentencing. Bed space impact from the post-HB 210 increase in Burglary 2<sup>nd</sup> dispositions could have been much greater, but it was mitigated mainly by higher plea-down rates. Volume in 2006 has more than offset that mitigation, and projections based on 2006 convictions are well above estimates in the original bill analysis. If 2006 patterns hold, DOC impact from HB 210's Burglary 2<sup>nd</sup> sentence increases could exceed original estimates by about 85 beds.



Pleas to Burglary 3<sup>rd</sup> in 2004 and 2006 comprised much larger percentages of total pleas than in 2002. The “Guilty Lesser Other” category in Figure 8 is primarily misdemeanor criminal trespass. The shift of plea-downs from misdemeanors to Burglary 3<sup>rd</sup> (a class F felony) might mean that the one-year minimum for Burglary 2<sup>nd</sup> is serving as increased leverage to obtain pleas to felonies in the post-HB 210 environment.

Disposition volume for Burglary 2<sup>nd</sup> increased considerably from 2002 (n=831) to 2004 (n=967), but many pre-HB 210 charges remained in the system through 2004 (Figure 9). Post-HB 210 charges disposed in 2004 were about equal to 2002 dispositions. A more dramatic disposition volume increase occurred in 2006 (n=1,174), and few pre-HB 210 charges remained by then. As shown in Figure 9, counts for 2006 were about 20 percent higher than in 2004, and 2004 had about a 15 percent increase over the 2002 base.



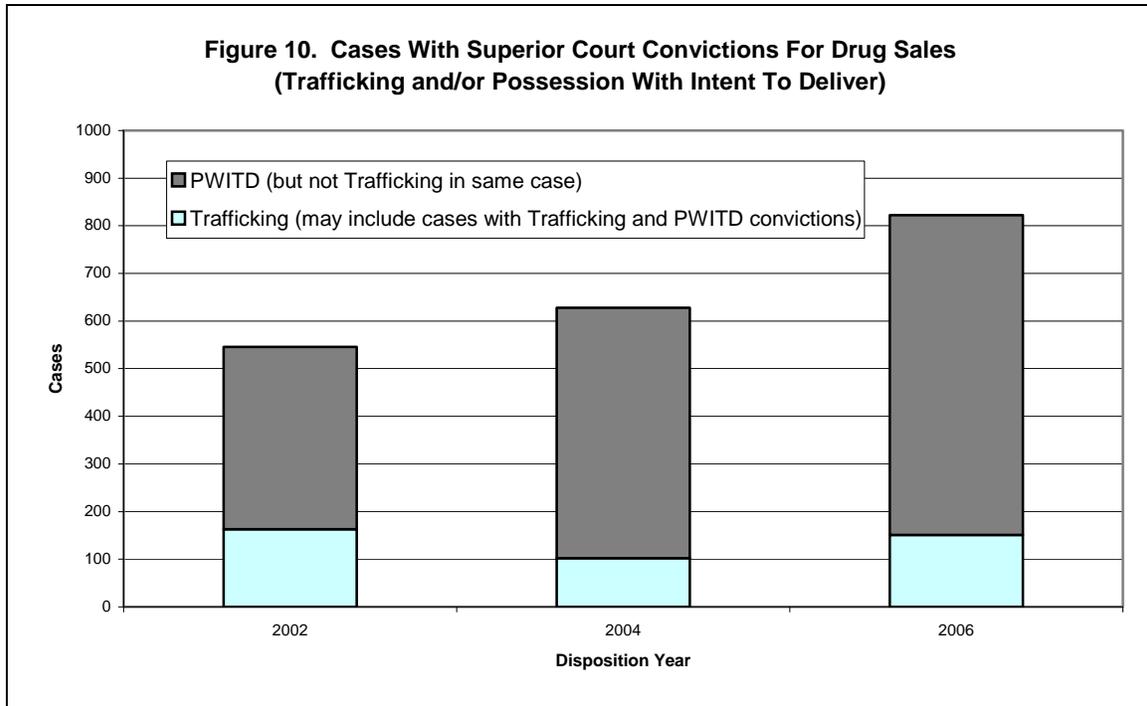
As noted in the overview of the bill’s changes, HB 210 added Burglary 2<sup>nd</sup> to the list of offenses eligible for first offender Boot Camp diversions. Initial projections included the expectation that some bed savings could come from those diversions, as successful Boot Camp cadets were expected to serve slightly more than half the one-year minimum. But analysis of recidivism among recent Boot Camp graduates (DeISAC, November 2007) shows that no real savings should be expected from Burglary 2<sup>nd</sup> Boot Camp diversions.

Burglars, including Boot Camp graduates, typically exhibit recidivism rates among the highest of any groups of offenders. By law, anyone granted a Boot Camp diversion who violates supervision conditions should be sentenced to serve their originally deferred term without credit for time in Boot Camp. Given one-year minimums for failed Burglary 2<sup>nd</sup> diversions, recidivism levels higher than about 55 percent could actually result in more bed use than would be required without the Boot Camp diversions.

Preliminary indications from 2007 arrest data are that Burglary 2<sup>nd</sup> may be subsiding. After increasing about 14 percent from 2005 to 2006, the first ten months of 2007 show Burglary 2<sup>nd</sup> arrest charges on pace to decline by about 7 percent. Disposition counts will remain high until the arrest surge of 2006 works through the system, but there is at least a short-term reduction on the horizon.

## HB 210 Impact On Drug Sales Prosecutions

Convictions for drug sales (trafficking or possession with intent to deliver) increased dramatically during the pre- to post-HB 210 time frame covered in this analysis (Figure 10). In 2004 there was an anticipated drop in trafficking convictions (expected due to increased weight thresholds for cocaine from 5 to 10 grams), but 2006 trafficking convictions were at nearly the same level as in 2002. Convictions for possession with intent to deliver (PWITD) were almost 75 percent higher in 2006 than in 2002.



The original HB 210 analysis projected a DOC bed requirement decrease of about 300 due to drug law changes. Current estimates are that bed consumption decreases from HB 210 mandatory term reductions and trafficking weight increases have, by 2006, been almost completely offset by growth in drug sales convictions since enactment of the bill. Despite an average sentence reduction of about 35 percent for defendants in drug sales cases, increased admissions have driven bed needs back up to near pre-HB 210 levels.

Drug sales convictions involve a complex mix of sentencing factors and options, with sentences ranging from probation to life in prison. In most cases, Level V time is not mandated for first time PWITD convictions, but there are mandatory terms for PWITD with requisite prior convictions or special conditions. Trafficking also carries mandatory prison terms, but in some cases PWITD and trafficking mandates can be deferred for Boot Camp. Habitual offender declarations allow for a range of possible Level V time from 0 to life, with life sentences sometimes optional and sometimes mandatory.

Adding to the copious sentence options for drug offenders, other Level V programs (e.g., Key and Greentree) that provide substance abuse treatment and life skills development

are available without the statutory restrictions of Boot Camp. Those programs are sometimes included in sentence conditions with provisions that Level V terms are suspended after completion of treatment, in some cases including a minimum Level V term and completion of treatment before suspension.

Several changes occurred between 2002 and 2006 in drug sales sentencing patterns. On average, sentence lengths decreased for most defendants, but there was also a decrease in the use of treatment options, and habitual offender declarations increased sharply. Table 3 provides a brief summary of changes in drug sales sentencing patterns from 2002 to 2006. Charge-based sentence volume, average terms, and estimated bed requirements are presented to show the relative contribution to bed impact for various sentence types.

Table 3. Illustrative bed space requirement changes for 2002 and 2006 Level V sentencing patterns in drug selling cases				
Sentence Type	Year	Number Sentenced	Average Term (months)	Estimated Bed Requirement
Drug mandatory or standard Level V	2002	258	38	817
	2006	312	28.2	733
Habitual Offender	2002	4	75	25
	2006	19	75	119
Suspended after minimum term and treatment	2002	14	43.1	50
	2006	10	28.2	24
Suspended after treatment without minimum term	2002	27	12*	27
	2006	22	12*	24
Boot Camp	2002	89	6*	45
	2006	83	6*	42

\* Average terms for Boot Camp and treatment without minimum terms are estimated program completion times.

Figure 11 shows a charge-based view of trafficking and PWITD convictions in pre- and post-HB 210 years. The PWITD increase in 2004 was accompanied by a decrease in trafficking convictions, so part of the initial growth might be explained as a shift from cocaine trafficking due to HB 210's increased weight thresholds. Significant PWITD growth continued with apparently little suppression of trafficking volume in 2006, even though HB 210 weight thresholds remained in effect.

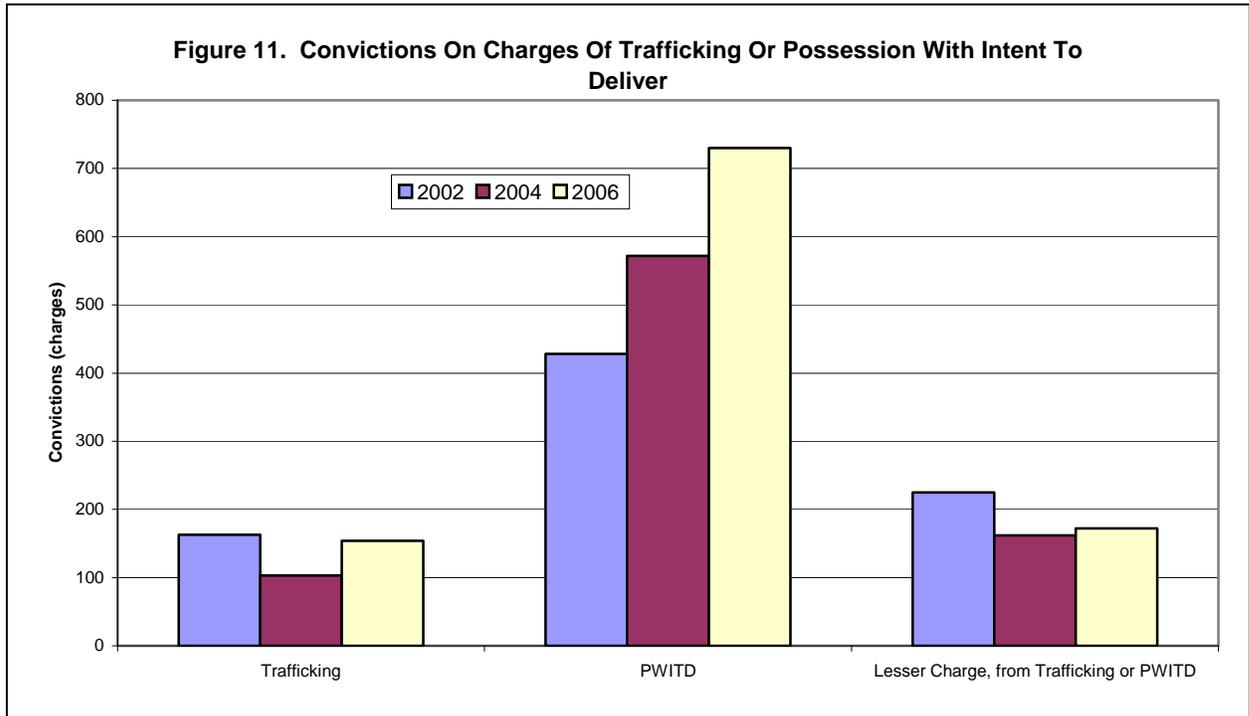
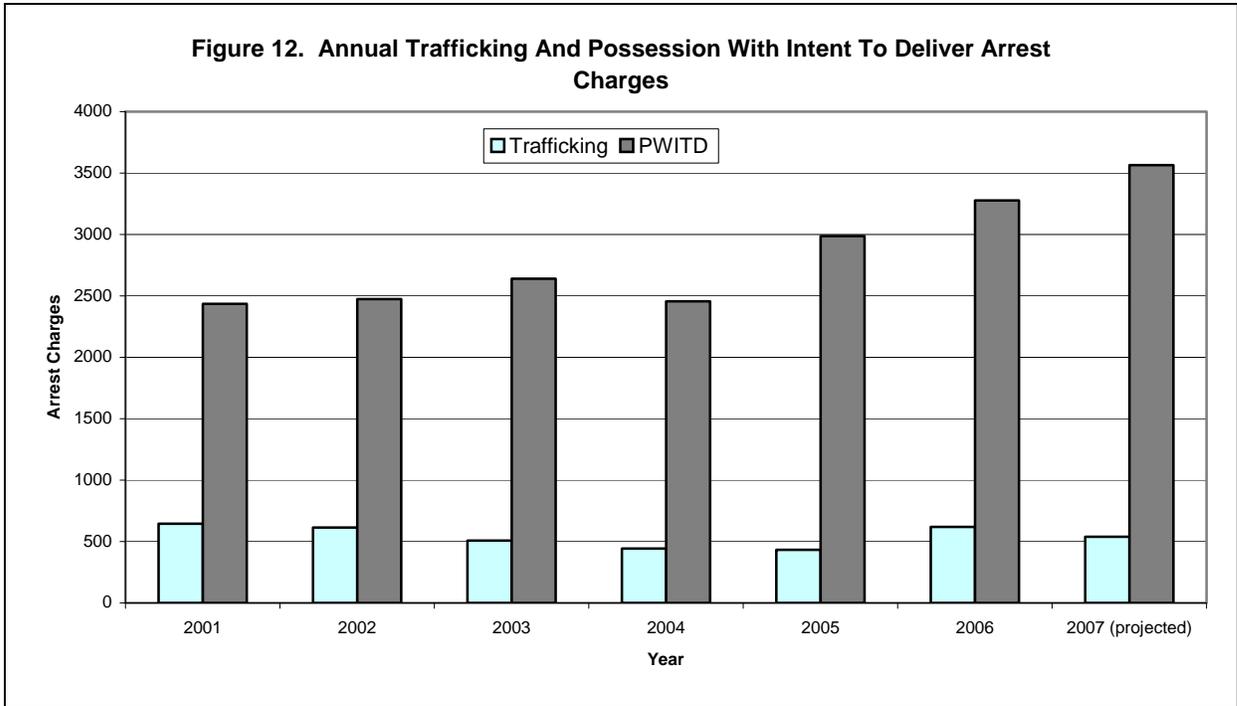


Figure 11 also shows that plea-downs from trafficking to lesser charges (misdemeanors or felonies without mandatory penalties) declined from 2002 to 2004 and remained near 2004's level in 2006. It is unclear if this is due to more aggressive prosecution or if HB 210's reduced penalties decreased the incentive to plea from drug dealing charges.

Figure 12 shows annual arrest charges from 2001 through 2006, with a projection for all of 2007 based on totals for the first ten months of that year. Trafficking charges declined in the early HB 210 years, but increased to near pre-HB 210 levels since then. After a dip in 2004, PWITD charges show a growth trend of about 10 percent annually.



Figures 11 and 12 together point to possible prosecution changes since HB 210 became law. PWITD convictions have increased in absolute terms as well as in proportion to the number of arrest charges entering the system. In pre-HB 210 prosecutions, about one in four trafficking charges led to a trafficking conviction, while about one in six PWITD arrest charges resulted in a PWITD conviction. Through 2006, the ratio of trafficking convictions to arrest charges stayed near a range of one in four to one in five, while PWITD convictions increased to about one in four arrest charges.

Data from the first ten months of 2007 give an indication of trafficking charge growth tapering off or fluctuating, but PWITD charges appear to be continuing a post-HB 210 trend of substantial increases. Whether a consequence or coincidence, strong growth in drug dealing prosecutions followed HB 210's penalty reductions. It is evident that those reductions will not produce desired decreases in DOC populations, and there appears to be a need for better understanding of the relationship between crime and punishment to address this problem successfully.