



**House Bill 210:
An Analysis of the Changes in Sentencing Patterns
and the
Department of Correction Bed Impact**

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THE LAW AND THE INTENDED TRADEOFFS

House Bill 210 (74 Del. Laws c. 106) became effective on June 30, 2003 and affected criminal case processing for crimes committed after that date.

One of the purposes of this new law was to reduce the minimum and minimum mandatory terms related to drug trafficking and repeat illicit drug selling. In addition to the reduced minimum terms, the law also allowed for the application of good time credits for drug trafficking cases. This further reduces the amount of prison time for mandatory drug sentences.

Another purpose of HB 210 was to increase the penalties for specific violent crimes including Assault 1st Degree, Murder 2nd Degree, Manslaughter, Robbery 1st Degree (both juvenile and adult), Burglary 1st and 2nd Degree, and Possession of a Deadly Weapon by Persons Prohibited.

In balance, the expectation was that the need for Department of Correction's (DOC) beds would be neutral with decreased penalties for drug mandatory crimes offsetting the bed need related to harsher penalties established for violent crimes.

In the initial assessment of the proposed law (DeISAC June 13, 2003), it was estimated that the increased penalties for violent crimes could result in the long-term need of as many as 172 DOC beds. Offsetting this increase would be an estimated 300 DOC bed savings attributed to the shorter terms associated with drug crimes. One of the caveats of the 2003 assessment was that the bed savings would be initially small but would increase more significantly after 2005 when the current population of drug traffickers and repeat drug sellers with pre-HB 210 minimum and minimum mandatory sentences completed their sentences and were released.

Not included in this study are two HB 210 initiatives. The HB 210 juvenile initiative which moves juveniles charged with Robbery 1st Degree from Family Court to Superior Court for original jurisdiction is being assessed in a separate study. Furthermore, HB 210 provides DOC the authority to move most Title 21, mostly repeat DUI cases, from Level V to Level IV. This issue will be addressed in a subsequent analysis, however it is important to know that in addition to the Level V bed savings discussed above, the HB 210 Title 21 initiative has the potential save another 155 DOC Level V beds.

THE STUDY DESIGN

This study provides a pre and post analysis of the sentencing patterns and DOC bed needs associated with most of the House Bill 210 offenses. Superior Court case filings and sentencing orders for calendar year 2002 are used as the baseline period to study the sentencing patterns and resulting DOC Level V beds because it was the last full year prior to the HB 210's effective date in mid-2003. Calendar year 2004 is used as the "post" HB 210 period to assess the changes in sentencing practices and DOC bed impacts.

Some of the crimes committed before June 30, 2003, had not reached the sentencing phase by January 2004. These 2004 cases which would be subject to pre HB 210 laws were not included as "post period" HB210 cases. For some types of crime this was a very small percentage of the charges under study, while for others especially Assault 1st Degree and Robbery 1st Degree, as many as 20 percent of the cases sentenced in 2004 were actually pre-HB 210 crimes. The results in this study are based only on cases processed under the new law, however the results from these analyses are annualized so that they represent the full number of 2004 sentencing orders associated with HB 210 issues.

The estimates of pre and post HB 210 sentence lengths include charges that result in a guilty finding for the HB 210 crime or the lesser-included crime mentioned on the sentencing order. There were many more charges indicted in Superior Court for HB 210 crimes than are convicted for the original or lesser-included crime. In the criminal justice proceedings many of the HB 210 crimes are nol prossed, found not guilty or otherwise "dropped." These cases are not assessed in this analysis. A nolle prosequi in these situations does not mean that the offender is not guilty of other charges in the case, just that the HB 210 charge is no longer part of the case.

The processes and impacts related to juvenile cases for Robbery 1st degree and deadly weapon are being addressed in a separate report (An Analysis of the Implementation of House Bill 210: Juvenile Offender Sections, DeISAC May 2005). The juvenile analysis is particularly complex because not only did House Bill 210 increase specific terms, these cases were expected to be filed initially in Superior Court where juveniles may be processed as if they are adults. In many situations, however, once filed in Superior Court these cases are subject to amenability reviews, where if the decision is that the youth could benefit from the juvenile system, he is sent back to Family Court for hearings, adjudication, treatment and/or incarceration. Lastly, time and resources have caused us to delay our assessment of the Title 21 cases.

The primary data source for this study is the disposition and sentencing database maintained by JIC, from which SAC obtains raw data for its sentencing research database. We also use CJIS data for confirmation when certain court data are missing or appear anomalous (e.g., when lesser-included offenses (LIO) or attempted crime references are incorrect or incomplete). The large volume of attempted statute references

(11 §0531) used as original and lesser-included charges requires labor-intensive research and recoding effort to prepare for an analysis of this detail. It would greatly enhance policy research efforts if the system adopted a policy that eliminated use of 11§0531 as a statute reference, and replaced it with the use of explicit statute references with a separate indicator for attempted crimes. The effort required to modify information systems to accommodate this change could yield offsetting payoffs such as greater efficiency in categorization of DOC populations.

Missing, unavailable, or incorrect sentence information is another area that consumes substantial research effort. Some sentence orders remain unapproved and the information is therefore unavailable for this study. Other issues encountered in the process of this study involve erroneous information that makes its way onto sentence orders. Some examples include entry of incorrect lesser-included offenses, selection of wrong charges to include on sentences, or placing sentence information on the wrong charges. We sought clarification for such issues for inclusion in this study and to correct the permanent record. We would like to acknowledge the assistance provided to this office by the Administration Office of the Courts' Analysis and Research Group and the Sussex County Superior Court's Deputy Court Administrator. Their work is an invaluable contribution to the goals of accurate information systems and valid research.

SUMMARY OF FINDINGS

The expectation of HB 210 was that the increases in DOC Level V bed needs for increased violent crime penalties would not exceed the bed savings realized from reduced penalties for drug trafficking and repeat convictions for selling illicit drugs.

The goal was achieved. If it continues on its current track, HB 210 will produce a significant DOC bed savings of up to 355 DOC Level V beds. However, the means by which these results were obtained could not be fully anticipated.

Tougher Laws Result in Tougher Penalties, but for Fewer Offenders

Surprisingly, some of the DOC bed need actually decreased for the HB 210 violent crimes. This is not because sentence lengths did not increase as required by the law. They did. In some cases, the sentence lengths increased significantly. However, in other cases the increased penalties apparently caused a reconsideration of the severity or components of the cases. The end result is that some offenders do receive much longer prison terms, but in balance these tougher laws affect fewer offenders. For many of the "less serious" HB 210 violent crime cases, the average sentence length or the percentage of offenders actually sentenced to Level V decreased. The balance between increased terms for some offenders and decreased terms for others yields a DOC bed savings where a DOC bed need was expected.

Confounding Factors

Important “confounding factors” also affect the sentencing patterns. Habitual offender statutes may result in longer than expected sentences. Six-month DOC boot camp sentences, especially for drug trafficking and burglary, can result in sentences much shorter than expected. It is interesting that for Burglary 2nd Degree where a tougher minimum term was imposed under HB 210, the use of boot camp as a diversionary sentence more than doubled. At the same time for Drug Trafficking sentences where the penalty decreased significantly under HB 210, the use of boot camp diversions decreased by at least one-half.

Sentences involving court ordered addiction treatment, especially if they are “addiction” sentences, significantly shorten long Level V terms. “Addiction” sentences, which are often for terms of up to five years, are suspendable when the offender completes his Level V DOC treatment – usually within 15 months. There was a small decrease in the number of “addiction” sentences under the tougher Burglary 2nd Degree terms, but there was very little change in “addiction” sentences for the reduced HB 210 drug terms.

Finally, another type of “treatment” sentence is a factor in this study. In some cases, judges require the sentenced offender to complete a specific minimum term in addition to treatment. With these “treatment” sentences the expected amount of time served before release from Level V often exceeds the 15 months estimation it takes to complete an “addiction” sentence. This type of treatment sentence is treated like any other Truth in Sentencing SENTAC sentence, except the offender is ordered to complete the DOC addiction treatment before the end of his sentence. An offender that is a laggard at treatment may find himself losing some of his “good time” and serving longer than expected. The most difficult issue for these cases in DOC is scheduling the treatment. How do they know when to start, so that the completion of treatment, which is dependant upon the offender’s progress, coincides with the expected release date and before the maximum term is completed?

Project Safe Neighborhood’s (PSN) Operation Disarm which is a joint venture involving the Delaware police and state and federal prosecutors operated concurrently with the implementation of HB 210. Within the past year and a half this project has transferred about 124 serious firearm offenders from the state to the federal court (The Ledger, December, 2004). These cases pertain to serious crimes associated with Possession of a Firearm During the Commission of a felony and Person Prohibited (PDWBPP) and may be associated with the decreased number of the state’s prosecution of PDWBPP following HB 210.

In the detailed analyses that follow for each of the HB 210 crimes the impact of these “confounding factors” on sentencing patterns before and after HB 210, as well as other shifts in the adversarial system, are described and explicitly included in the impact calculations.

Summary of DOC Bed Impact for HB 210 Crimes
(Sans Juvenile and Title 21 Changes)

HB 210 DOC Bed Savings: 355

Phase in of the Results

We have already experienced a small decrease in the need for DOC Level V beds. This is primarily related to the decrease in admissions, particularly for drug offenses. More of the DOC bed savings will be realized as longer term pre-HB 210 drug offenders are released from their 3 and 5 year minimum and minimum mandatory sentences. This reduction in bed demand will start to be felt in late 2005 and will pick up in 2006 through 2008.

HB 210 Violent Crimes: DOC Bed Decrease 57

Robbery 1 st Degree	112 DOC Bed Decrease
Burglary 1 st Degree	12 DOC Bed Increase
Burglary 2 nd Degree	33 DOC Bed Increase
Assault 1 st Degree	0 DOC Bed Impact
Manslaughter	0 DOC Bed Impact
Murder 2 nd Degree	10 DOC Bed Increase
Possession of Deadly Weapon by PP	0 DOC Bed Impact

HB 210 Drug Crimes: DOC Bed Decrease 298

Drug Trafficking	145 DOC Bed Decrease
Repeat PWITD Narcotic Cases	125 DOC Bed Decrease
Repeat PWITD Non-Narcotic Cases	28 DOC Bed Decrease

A NOTE OF CAUTION.

These estimates assume that future behavior of criminals and the criminal justice system will remain consistent with our experiences in 2004 in regards to HB 210 cases. As this study portrays, the workings of the criminal justice system are complex, and as these results are taken into consideration, they themselves may result in policy shifts that change future results.

ROBBERY 1ST DEGREE LAW CHANGES

House Bill 210 increased the minimum sentence for Robbery 1st from two years to three years. Both the old and the new Robbery 1st terms include earned good time reductions. In addition, House Bill 210 increased the minimum sentence for a repeat Robbery 1st offender from a four year minimum sentence to a five year minimum sentence.

It was anticipated that these increases in Robbery 1st Degree terms would require 26 more Department of Correction beds.

CHANGES IN ROBBERY 1ST DEGREE SENTENCING PATTERNS AND DOC BED IMPACT DOC BED SAVINGS: 112

The cases used for the assessment of the court processes and the DOC bed impact include Robbery 1st Degree charges that result in a Robbery 1st Degree conviction and Robbery 1st Degree charges that are pled to a lesser-included crime. By far, the most common lesser-included crime is Robbery in the 2nd Degree. The cases where the Robbery 1st Degree charges are nol prossed or otherwise “dropped” prior to conviction are not assessed in this analysis. A nolle prosequi in these situations does not mean that the offender is not guilty of other charges in the case, just that the reference to the robbery charge has been removed from the case.

As was expected the sentence length for offenders convicted of Robbery 1st charge and sentenced to Level V increased from an average of 35 months in 2002 to 44 months in 2004. This outcome is well within the expectation of the new law. Even in situations where the Robbery 1st charge was reduced to a lesser-included crime the sentence length increased. In 2002, the Robbery 1st lesser-included crimes received, on average, 12.2 months when sentenced to Level V. After HB 210 the average sentence length for these types of charges increased to 14.6 months.

Yet, ironically, the total DOC beds needed for these types of charges decreased from 665 to 553. This DOC bed savings of 112 beds, while obviously not associated with increased length of stay related to HB 210, can be explained by some complex shifts in the adversarial process. It is interesting that these shifts in sentencing patterns were not related to the number of cases that were indicted for a Robbery 1st Degree charge(s) and concluded as a conviction with a Level V sentence for a Robbery 1st Degree, lesser-included-crimes or other crimes in the case. In 2002 there were 200 Robbery 1st Degree cases that concluded with a conviction with a Level V term, and in 2004 there were almost an equal number at 195.

Sentencing today is complex. There are “standard” Level V sentences and there are “special” Level V sentences. Some “special” Level V sentences include life sentences and habitual offender sentences, which are reserved for offenders with substantial criminal histories. These “exceptional sentences” are significantly longer than standard Level V sentences. There are also special Level V sentences for DOC addiction treatment, which while appearing to be as long or longer than a standard sentence, are actually shorter because they are non-Truth-in-Sentencing terms that are suspendable upon completion of the DOC treatment. In these situations, what may appear to be a five-year term ends up being a 9 to 15 month term when the offender successfully completes the prison based addiction treatment program. Lastly, DOC boot camp sentences are six-month Level V terms, which are sometimes used for lesser-included Robbery 1st Degree convictions, and are far below any standard Robbery 1st Degree term.

While the number of Robbery 1st Degree related cases that resulted in a conviction and were sentenced to Level V remained nearly equal before and after HB 210, so did the proportion that received a standard Level V term (85.5 percent in 2002 and 84.6 percent in 2004). In 2002, there were 171 standard Level V sentences out of the 200 Robbery 1st Degree cases. In 2004, there were 165 out of 195 Robbery 1st Degree cases. Also, the distribution of Robbery 1st cases or lesser-included convictions that received an exceptional sentence either enhanced or reduced remained relatively constant pre and post HB 210.

At this point, neither the number of cases or persons sentenced to Level V because of a Robbery 1st Degree charge or because of exceptional sentencing above or below the minimum Felony B sentence can explain the decreased need for DOC beds following the implementation of HB 210.

However, one of the things that can help explain the decreased need for DOC beds following the implementation of HB 210 is the decrease in the total number of charges associated with these cases (See Table 1: *HB 210 Robbery 1st Degree Case and Case by Charge Analyses*). In 2002, the 200 Level V cases involved 308 Robbery 1st Degree charges including Robbery 1st Degree convictions, plea downs from Robbery 1st Degree to lesser-included charges, and other charges. On average prior the HB 210 there were 1.54 robbery charges per case. In 2004, the 195 Level V cases involved only 248 charges -- or an average of 1.27 robbery charges or other related charges per case. This reduction of 60 Robbery 1st Degree or other case charges resulting in a Level V term is important for DOC bed impact because Delaware is a “consecutive sentencing” state. That is, if an offender is sentenced for two Robbery 1st Degree charges the terms for each of these charges is served consecutively rather than concurrently as in many other states.

Table 1:
HB 210 Robbery 1st Degree
Case and Case by Charge Analyses

	<u>Pre HB210: 2002</u>	<u>Post HB210: 2004</u>
<u>Robbery 1st Degree by Case</u>		
Robbery 1 st Degree Cases Resulting in LV Sentence	200	195
Avg. Sentence Length for "Standard" Robbery 1 st Charges	35 months	44 months
Avg. Sentence Length for "Standard" Lesser-Included Charges	12.2 months	14.6 months
Number of Standard Level V Sentences	171	165
Number of Departures Up or Down	29	30
Percent of Level V Sentences Standard	85.5%	84.6%

	<u>Pre HB210: 2002</u>	<u>Post HB210: 2004</u>
<u>Robbery 1st Degree by Charges Within a Case</u>		
Number of Charges per Case where the Case Results in a LV Sentence	308	248
Number of Charges per Case	1.54	1.27
Number of Charges in the Cases that Result in a Robbery 1 st Conviction	182 (59%)	114 (46%)
Number of Charges in the Cases that Result in a Lesser-Included (Robbery 2 nd) Conviction	44 (14%)	58 (23%)
Number of Charges in the Cases that Result in a Non-Robbery Conviction	82 (27%)	76 (31%)

Not only did then the number of charges per case decrease, but the overall charge severity at conviction decreased for Robbery 1st Degree cases following the implementation of HB 210.

Table 1 shows that the number of Robbery 1st Degree charges with a Level V sentence decreased from 182 to 114, while at the same time, the number of convictions on lesser-included robbery offenses increased from 44 to 58. It is important to notice that total number of Robbery 1st Degree and lesser-included robbery charges decreased from 226 prior to HB 210 to 172 after HB 210. The number of Robbery 1st cases with conviction on charges other than a robbery charge declined slightly after HB 210 from 82 to 76. The most likely “other charges” of conviction for Level V Robbery cases were conspiracy and possession of a firearm or deadly weapon during the commission of a felony.

Table 2, *Types of Sentences for Robbery 1st Degree and Lesser-Included charges (Robbery 2nd Degree) for Level V Cases*, provides a charge based analysis showing the sentencing enhancements and diminutions from standard SENTAC-Truth in Sentencing practice. For Robbery 1st Degree convictions, the number of cases receiving an

Table 2:
Types of Sentences for Robbery 1st Degree
and Lesser-Included-Charges (Robbery 2nd Degree)
for Level V Cases

Type of Sentence	<u>Pre HB210: 2002</u>		<u>Post HB210: 2004</u>	
	Number	Percent	Number(est.)	Percent
Robbery 1st Convictions				
Level V (Standard)	169	74.8%	105	61.0%
Habitual Life	2	.9%	2	1.1%
Habitual Non-Life	4	1.8%	3	1.7%
Treatment: After term served.	7	3.1%	4	2.3%
Robbery 1st Lesser-Included- Offense				
Level V (Standard)	32	14.2%	53	30.8%
Habitual Non-Life	2	.9%	0	0.0%
Level V Bootcamp	1	.5 %	0	0.0%
Treatment: Susp.on Success	9*	3.9%	5*	2.9%
Total Charges Conviction	226		172	

* Treatment: Suspension upon success is not a Truth in Sentencing term where at least 75 percent of the sentence is served before release from Level V. Rather the “suspension upon success” sentence, which is also known as an “addiction sentence” can be suspended upon successful completion of a DOC Level V drug treatment program. This program is often completed and the offender released within 15 months.

enhanced habitual term or a” treatment to be after completion of base sentence” remained proportionally consistent with 5.8 percent of the Robbery 1st charges at conviction receiving an enhanced sentence before HB 210 and 5.1 percent after. For Robbery 1st lesser included charges, the number of diminished terms for DOC boot camp and addition sentences (Level V terms suspended upon completion of the DOC Level V treatment) decreased only slightly from 10 to 5 charges.

What has happened is that as the minimum sentence for Robbery 1st increased from two years to three years and to five years for repeat offenders under HB 210, the number of persons actually convicted for Robbery 1st Degree decreased. While the number of Robbery 1st indictments and the number of persons eventually ending up incarcerated did not significantly change, the percentage of the cases being convicted of a Robbery 1st Degree decreased. Moreover, for the convictions receiving Level V time, the number of charges per case at conviction also decreased. The combination of fewer and less severe charges at conviction for Robbery 1st Degree cases resulted in overall shorter Level V terms. This tougher law while not diverting cases from Level V has acted as an instrument for sorting cases where only the most serious criminals with the strongest evidence made the grade. For these offenders, a tougher penalty has been achieved. However, the apparently weaker cases received proportionately shorter sentences than if they had been indicted prior to HB 210. In balance, for what may seem, at first glance, to be an insignificant shift in the adversarial process, there was a significant change in DOC bed need. Tougher laws got much tougher sentences, but for fewer offenders.

BURGLARY 1ST DEGREE LAW CHANGES

House Bill 210 increased the minimum sentence for Burglary 1st from presumptive one year SENTAC Felony C sentence to two year minimum sentence that qualifies for good time credit reductions. In addition, House Bill 210 increased the minimum sentence for a repeat Burglary 1st offender to a four year minimum sentence. This conviction would also qualify for good time credit reductions.

It was anticipated that these increases in Burglary 1st Degree terms would require 5 more Department of Correction beds.

CHANGES IN BURGLARY 1ST DEGREE SENTENCING PATTERNS AND DOC BED IMPACT

DOC BED IMPACT: 12

In 2002, the pre-HB 210 baseline period, there were 42 Burglary 1st Degree charges resulting in a Superior Court conviction for Burglary 1st or Burglary 2nd and Burglary 3rd as a lesser-included crime. Fourteen (33 percent) of these convictions resulted in a Level V sentence. The average sentence length for the Level V terms was 18 months. The annual DOC bed impact prior to HB 210 was 21.

In 2004, the HB 210 post implementation period, 29 Burglary 1st Degree charges resulted in a Superior Court conviction for Burglary 1st, or Burglary 2nd and Burglary 3rd as a lesser-included crime. Seventeen (59 percent) of these convictions resulted in a Level V sentence. The average sentence length for the Level V terms was 23 months. The slightly lower than expected sentence length for Burglary 1st Degree under HB210 is because one offender's sentence was deferred for a six month boot camp sentence. The annual DOC bed impact after HB 210 is 33, resulting in a 12-bed impact.

While the number of Burglary 1st cases decreased after the implementation of HB 210, the likelihood of a Level V term almost doubled upon conviction and the sentence length increased by 5 months. The combination of these changes resulted in an increased need for 12 DOC beds.

BURGLARY 2ND DEGREE LAW CHANGES

House Bill 210 established a one-year minimum sentence (with a good time reduction) on the condition that the offender has no prior Burglary 1st or 2nd prior convictions in the last 5 years. For repeat Burglary 2nd Degree offenders, the minimum sentence (with a good time reduction) would be two years. Burglary 2nd offender might qualify for DOC boot camp, which would result in a much shorter deferred sentence of six months.

It was anticipated that these increases in Burglary 2nd Degree terms would require between 45 and 75 (average estimate of 60) more Department of Correction beds depending upon how many of these cases received a shorter boot camp sentence.

CHANGES IN BURGLARY 2ND DEGREE SENTENCING PATTERNS AND DOC BED IMPACT

DOC BED IMPACT: 33

In 2002, the pre-HB 210 baseline period, there were 294 Burglary 2nd Degree charges resulting in a Superior Court conviction for Burglary 2nd or for Burglary 3rd or other lesser-included crimes. One hundred (34 percent) of these convictions resulted in a Level V sentence. The average sentence length for the Level V terms was 23 months (sentence length includes exceptional sentences). The annual DOC bed impact prior to HB 210 was 190.

In 2004, the HB 210 post implementation period, 337 Burglary 2nd Degree charges resulted in a Superior Court conviction for Burglary 2nd or for Burglary 3rd or other lesser-included crimes. One hundred and fifty-one (45 percent) of these convictions resulted in a Level V sentence. The average sentence length for the Level V terms was 21 months (sentence length includes exceptional sentences). The annual DOC bed impact after HB 210 is 223, resulting in a 33 bed increase over the 2002 baseline

The Burglary 2nd HB 210 bed impact was somewhat less than expected. This is a little surprising considering that the number of Burglary 2nd charges processed in 2004 was 15 percent higher than in 2002. Moreover, the likelihood of receiving a Level V sentence increased from 34 to 45 percent. If sentence length had remained equal before and after HB 210 under these conditions the DOC bed impact would have been higher and would have actually been very close (61) to the anticipated bed impact of about 60 DOC beds.

Mitigating the DOC bed impact was a reduction in Level V terms 22.4 months prior to HB 210 to 15.7 months after HB 210 for offenders convicted of Burglary 2nd Degree (sans any exceptional sentences like a habitual sentence). While well within the bounds of the HB 210 one-year minimum sentence for the Burglary 2nds at 15.7 months, the 6.7 month reduction in the average Level V sentence compared to pre HB 210 average appears to be associated with a greater uniformity of sentencing under HB 210. Prior to HB 210, the Level V sentences ranged broadly between 3 to 96 (while at the statutory maximum, the two 96 month sentences were not habitual sentence terms) months, while after HB 210 the range narrowed to 12 (the new HB 210 minimum) and a high of 48 months.

A second mitigating factor is the increased use of the six-month boot camp sentence under HB 210. Prior to HB 210, 13 percent (13 cases) of the HB 210 Burglary 2nd sentences were for the 6-month boot camp sentence. After implementation of HB 210, 20 percent (30 cases) received the shorter boot camp sentence. This increased use of boot camp is most likely related to stipulation (11§6712b) in HB 210 that explicitly states that Burglary 2nd sentences may be deferred for DOC boot camp.

At the same time as the boot camp Burglary 2nd Degree admissions were increasing, the DOC addiction sentences were decreasing. In 2002, 18 Burglary 2nd offenders received Level V addiction sentences that were suspendable upon completion of the DOC treatment program. These addiction treatment sentences tend to run between 9 and 15 months. In 2004, there were only four addiction treatment sentences.

Lastly in regards to Burglary 2nd sentencing patterns, HB 210 apparently caused little change in the use of the habitual offender (11§4214a) terms for Burglary 2nd cases. In 2002, 10 cases, and in 2004 11 cases were sentenced pursuant to the habitual offender statute. The average habitual offenders sentence was 8 years both pre and post HB 210.

ASSAULT IN 1ST DEGREE LAW CHANGES

House Bill 210 moved Assault 1st from a Class C felony to a Class B felony. Class C felony crimes have a sentencing range from probation to up to 10 years incarceration. The presumptive range under SENTAC, however, is one year. Class B felony crimes have a sentencing range from a minimum sentence of two years to a maximum 25 years. The maximum term of 25 years for Class B felony crimes was another change related to HB210. Prior to HB210 (Section 9), Class B felony crimes carried a maximum term of 20 years.

It was anticipated that these increases in terms associated with Assault 1st under HB210 would require about 20 more DOC beds.

CHANGES IN ASSAULT 1ST DEGREE SENTENCING PATTERNS AND DOC BED IMPACT

NO DOC BED IMPACT

In 2002, *the pre-HB 210 baseline period*, there were 50 Assault 1st Degree charges resulting in a Superior Court conviction. Forty-four percent of these charges resulted in a conviction for an Assault 1st or lesser-included crime (Assault 2nd), which resulted in a Level V sentence. The average sentence length for the Level V terms was 23 months when the conviction was for Assault 1st Degree and 14 months when the conviction was for a lesser-included Assault 2nd Degree. The annual DOC bed impact prior to HB 210 was 52.

In 2004, *the HB 210 period*, there were 58 Assault 1st Degree charges resulting in a Superior Court conviction. Forty-seven percent of these charges resulted in a conviction for an Assault 1st or lesser-included crime (Assault 2nd), which resulted in a Level V sentence. The average sentence length for the Level V terms was 46 months when the conviction was for Assault 1st Degree and 16.5 months when the conviction was for a lesser-included Assault 2nd Degree. The annual DOC bed impact after HB 210 was 51. One of the offenders in 2004 was sentenced to the maximum term of 25 years or 300 months. The impact for his term was not included because he was already serving a life term.

The Assault 1st HB 210 bed impact was less than expected. It was projected that the HB 210 impact would be 20 DOC beds, yet in the final tally there was essentially no difference in the DOC bed impact before or after HB 210. The average length of stay doubled (from 23 to 46 months) for Assault 1st cases sentenced where there was not a plea to a lesser-included crime. This increase in sentence length is far above the new minimum term of 24 months, and without some adjustment, the DOC bed impact would have been at least as high or higher than expected. What happened is, as the sentence lengths increased the percentage of charges actually convicted of Assault 1st Degree decreased from 68 percent to 26 percent. Conversely, the numbers of charges pled to Assault 2nd Degree as a lesser- included-crime or as “suspendable addiction treatment

sentences”, where the terms are shorter, increased. Tougher laws got much tougher sentences, but for fewer offenders.

Special Situation for Attempted Murder Cases that are Pled to Assault 1st Degree

In 2002, six attempted murder cases were convicted as Assault 1st Degree. The average sentence length for these cases was 60 months. In 2004, there were an estimated 15 attempted murder cases convicted as Assault 1st Degree. The average sentence length for these cases was 91 months or 7.6 years (one of these cases resulted in a habitual offender (11 §4214a) sentence of 20 years – this case was not included in the average term). These increased numbers of attempted murder cases being pled to Assault 1st Degree convictions results in almost a 90 bed impact.

The increase in the number of attempted murder cases being pled to Assault 1st Degree appears to be related to the significant increase in attempted murder charges in 2004. In 2002, there were 29 persons convicted for an attempted murder or lesser-included crime. In 2004, this count almost doubled to 48 persons. Interestingly, as the volume of cases almost doubled the probability of being convicted of an Assault 1st Degree remained nearly constant between 46 and 47 percent. Looking at the resulting 90 bed impact on DOC, it was found that about 60 percent of that impact can be attributed to the increased number of attempted murder cases being pled to Assault 1st Degree. The other 40 percent can be attributed to the increased sentence length.

There may be an indirect relationship between HB 210 and the significant increase in the number of attempted murder cases being pled to Assault 1st Degree. It may be that a *tougher* Assault 1st Degree sentencing law may make it more appropriate to plea attempted murder charges to Assault 1st Degree. However, there is nothing explicit in the law that would require such a style of implementation.

MANSLAUGHTER LAW CHANGES

House Bill 210 moved Manslaughter from a Class C felony to a Class B felony. Class C felony crimes have a sentencing range from probation to up to 10 years incarceration. The presumptive range under SENTAC, however, is one year. Class B felony crimes have a sentencing range from a minimum sentence of two years to a maximum 25 years. The maximum term of 25 years for Class B felony crimes was another change related to HB 210. Prior to HB 210 (Section 9), Class B felony crimes carried a maximum term of 20 years.

It was anticipated that these increases in terms associated with Manslaughter under HB 210 would not require any additional Department of Correction beds because sentencing terms already exceeded the new minimum terms.

CHANGES IN MANSLAUGHTER SENTENCING PATTERNS AND DOC BED IMPACT

NO DOC BED IMPACT

Although there were more Manslaughter cases in 2004 than in 2002, the length of sentencing terms equaled or exceeded HB 210 levels – as was the situation prior to HB 210. There was no discernable DOC bed impact because of HB 210 changes to the sentencing laws.

MURDER 2ND DEGREE LAW CHANGES

House Bill 210 moved Murder 2nd from a Class B felony to a Class A felony. Prior to HB 210 Murder 2nd Degree had a minimum term of 10 years instead of the ordinary 2 year minimum for Class B felony crimes. As a Class A felony, the minimum for Murder 2nd Degree increased to 15 years with a new maximum of “up to life.”

It was anticipated that these increases in minimum terms for 15 years would not be experienced until 2013.

CHANGES IN MURDER 2ND DEGREE SENTENCING PATTERNS AND DOC BED IMPACT

10 DOC BED IMPACT

There were more Murder 2nd Degree cases in 2004 than in 2002. The length of sentencing terms in 2004 equaled or exceeded HB 210 levels (except one erroneous case). This was also the situation for all but a few cases in 2002. The average sentence length pre and post HB 210 for Murder 2nd Degree ranges between 17 to 19 years. The only impact that is anticipated by moving Murder 2nd Degree to a Class A Felony is about 10 beds which will occur after 2013 for a few cases that would be moved from 10 to 15 year minimum terms.

POSSESSION OF A DEADLY WEAPON BY PERSONS PROHIBITED LAW CHANGES

House Bill 210 establishes Possession of a Deadly Weapon by Persons Prohibited (PDWBPP) as a violent felony under Delaware Law if the offender was in possession of a firearm or destructive weapon. Other changes were also made so that the pre-HB 210 one-year minimum, which included a predicate conviction for drugs, was no longer in effect. Likewise, the one-year minimum could no longer be invoked for the possession of ammunition. The one-year minimum mandatory and classification as a violent felony under HB 210 was limited to cases where a prior violent felony conviction was the reason for the prohibition. PDWBPP not subject to minimum sentencing would still be

sentenced as a Felony F unless the deadly weapon was a firearm or ammunition for a firearm, in which case it would be a Felony D.

House Bill 210 increased the penalties for repeat offenders' possessing a firearm. If a PDWBPP firearm offender has a prior violent conviction in his history within the last 10 years (tolling time at Level V: that is, the time at Level V does not count toward the 10 years), the minimum term is 3 years. If the PDWBPP offender has two prior violent felonies, the minimum sentence is 5 years. A 16 DOC bed impact was expected from these changes.

CHANGES IN POSSESSION OF A DEADLY WEAPON BY PERSONS PROHIBITED SENTENCING PATTERNS AND DOC BED IMPACT

NO DOC BED IMPACT

There was a significant decrease in PDWBPP convictions in 2004. In 2002, there were 75 PDWBPP convictions. In 2004, there were 41.

There was one PDWBPP sentence greater than 5 years in 2004, while there were two in 2002. Therefore, there was no DOC bed impact for offenders convicted of PDWBPP with two prior violent felony convictions.

There was, however, an increased propensity for terms of three-to-five years. In 2002, there were only three PDWBPP sentences equal to three-to-five years. In 2004 there were 14 sentences within this range. Therefore, there was about a 33 DOC bed impact for PDWBPP convictions with the one prior violent felony conviction in the past 10 years.

For sentences between one-to-three years for PDWBPP, there was a significant decrease in the number of cases. In 2002 there were 68 one-to-three year PDWBPP sentences. In 2004, the volume decreased to only 27. Because there were so many fewer one-to-three PDWBPP sentences, there was no DOC bed impact. The decrease in one-to-three year sentences offsets the shift to three-to-five year sentences for repeat violent offenders. This decrease, in part, could be associated with the removal of the pre-HB 210 minimum one year sentence for the possession of a firearm or ammunition by persons prohibited due to a prior drug conviction.

Project Safe Neighborhood's Operation Disarm which is a joint venture involving the Delaware police, and state and federal prosecutors operated concurrently with the implementation of HB 210. Within the past year and a half this project has moved about 124 serious firearm offenders from the state to the federal court. These cases pertain to serious crimes associated with Possession of a Firearm During the Commission of a Felony and PDWBPP and may be associated with the decrease in the state's prosecution of PDWBPP.

DRUG CRIME LAW CHANGES

Reduction in “Per Se” Weights and Sentence Terms for Drug Trafficking

Under HB 210 Drug Trafficking (16 §4753A) minimum sentences lengths were changed so as to yield shorter prison terms. All types of illicit drugs, except heroin and designer drugs, were affected by these changes.

*The first tier 10 – 50 grams ... minimum reduced from 3 to 2 years.
The second tier 50 to 100 grams ... minimum reduced from 5 to 4 years.
The third tier 100-plus grams ... minimum reduced from 15 to 8 years.*

For cocaine the new HB 210 minimum sentence for drug trafficking were linked to a change in the first tier per se weight. For cocaine related drug trafficking the per se weights for the lowest tier were increased from 5-to-10 grams, to a range between 10 and 50 grams. The second and third tiers for cocaine drug mandatory sentencing per se weights of 50-to-100 grams and 100+ grams remained the same. This change was expected to decrease the number of drug trafficking cases admitted to prison.

Another HB 210 change was that the drug trafficking laws would not longer be a “flat” minimum mandatory term. Any drug trafficking offender sentenced under the new law could be “flowed down” from Level V to Level IV during the last six months of their sentence. Therefore, the new two year minimum term could actually be reduced even further to 18 months in situations were the offender was moved by the Department of Correction to Level IV during the last 6 months of their sentence. Compared to the old drug trafficking three year minimum term, the new law’s Level V prison time would be reduced by one-half: from three years to 18 months.

The DOC bed savings that was expected for the changes in drug trafficking laws was 170 beds.

Reductions in Repeat Drug Offender Penalties for Possession with the Intent to Deliver Laws

The primary criminal statute used to enhance the punishment for repeat illicit drug selling is 16 §4763. Prior to HB 210, the repeat illicit drug selling statute could be combined with a Possession with the Intent to Deliver (i.e., PWITD of narcotics 16 §4751 and non-narcotic 16 §4752) where there was history of prior drug convictions to produce mandatory minimum terms. The repeat drug selling enhancement for a PWITD of narcotics was a five year mandatory minimum sentence. For PWITD of non-narcotics the mandatory minimum sentence was three years.

Under HB 210, several significant changes took place, which were intended to reduce sentence lengths and use of DOC Level V beds.

Before the passage of HB 210 any prior illicit drug conviction could be used to trigger the use of (16 §4763). Therefore, even a prior “simple” possession of illicit drugs, or possession of illicit drugs with ‘x’ feet of a school or park could be combined with a PWITD conviction to justify a enhanced mandatory minimum sentence. HB 210 limited the prior history crimes that can be used for triggering the repeat sentencing enhancement to PWITD (16 §4751 and §4752, Drug Trafficking (16 §4753A), and Selling Drugs to Minors (16 §4761).

Second, HB 210 provided that the repeat drug offender penalty for PWITD for narcotics (excluding heroin) was to be reduced from a five to a three years minimum sentence.

Third, during the last six months of any three-year “enhanced” repeat drug offender sentence, the law was changed so that the last six months of the minimum sentence could be served at Level IV. Therefore, for example, a five-year sentence under the old law for a repeat (16 §4763 combined with a 16 §4751 or a 16§4752) offender violation would be only two and one-half years under the new law; that is, three years with the last six months being served at Level IV.

Finally, the 15 year minimum sentence provided in 16 §4763(3) which was the old prior delivery or drug trafficking repeat offender enhancement was stricken in its entirety.

The DOC bed savings that was expected for the changes in repeat drug offender penalties was 130 beds.

CHANGES IN DRUG CRIME SENTENCING PATTERNS AND DOC BED IMPACT

In 2002 (the HB 210 baseline period for the analysis), there were 11,846 drug crime charges that were included in a Superior Court case. In 2004 (the HB 210 post implementation period), there were 12,469 drug charges that were included in a Superior Court case. This represents a 5 percent increase for Superior Court drug charges.

During the same time periods, the number of the drug trafficking and PWITD charges in Superior Court decreased from 3,281 to 2,814, a decrease of 14 percent. To some degree the reduction in drug trafficking is expected because of the increase in the per se weights for cocaine trafficking from 5 to 10 grams automatically displace some drug cases to less serious crime categories. Are “old pre HB 210” drug trafficking cases being charged as PWITD? It appears not. PWITD cases also decreased between 2002 and 2004. Rather it appears that many cases that heretofore were handled as drug trafficking cases are now being handled as simple possession cases rather than PWITD cases as drug possession, maintaining a dwelling, and drug paraphernalia charges increased.

PWITD charges have also decreased in 2004, however, the reasons may not be directly related to the intent of HB 210.

Changes for Drug Trafficking Superior Court Cases

DOC BED SAVINGS: 145

Taking into account all changes in the process of drug trafficking cases pre and post HB 210 there is an estimated 145 savings in DOC beds.

First, this was caused by the decrease in Level V drug trafficking admissions. Drug trafficking admissions decreased from 173 in 2002 to 104 in 2004. Almost all the decrease in admissions is associated with the per se weight being raised from 5 to 10 grams for cocaine trafficking convictions. Prior to HB 210, there were 131 first tier (10–50) drug trafficking admissions to Level V. After the standard was raised to 10 grams, there were only 60 Level V first tier (10–50 gram) drug trafficking admissions. Also aiding the reduced DOC bed need was the decreases in length of sentence within each of the three drug trafficking tiers, but interestingly, the decreases for the top two drug trafficking tiers were much greater than for the first tier.

Another important consequence of HB 210 and drug trafficking cases was the decreased number of drug traffickers being diverted to the six-month bootcamp program. This decrease in the proportion of six-month sentences attenuated the overall decrease in length of stay that might have occurred under HB 210. Apparently, the possibility of an 18-month Level V term instead of a 36-month term made the bootcamp alternative less desirable. In 2002 there were 50 drug trafficking sentences that included a deferral to DOC bootcamp. In 2004, this number decreased to 28.

Table 3, below, summarizes the distribution of the types of sentences for Drug Trafficking and lesser-included convictions for periods before and after the implementation of HB 210.

Table 3:
Types of Sentences for Drug Trafficking
and Lesser-Included-Convictions
for
Each Drug Trafficking Tier
Before and After HB 210

Tier 1:

Pre: 5 to 50 grams cocaine Minimum Sentence: 3 Years	Post: 10 to 50 grams cocaine Minimum Sentence: 2 Years minus 6mos. Level IV
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Type of Sentence	Number Sentenced		Avg. Sentence (Mos.)	
	Pre	Post	Pre	Post
Level V	73	37	39.5	34.7
Bootcamp	44	21	6.0	6.0
Level V LIO	4	1	15.5	12.0
Treatment: After term served	7	0	44.6	--
Treatment: Suspended on Success	2*	0	36-96*	--
Habitual (4214a)	1	1	120	120
Total Number Sentenced	131	60		

Tier 2:

Pre: 50 to 100 grams cocaine Minimum Sentence: 5 Years	Post: 50 to 100 grams cocaine Minimum Sentence: 4 Years minus 6 mos. Level IV
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Type of Sentence	Number Sentenced		Avg. Sentence (Mos.)	
	Pre	Post	Pre	Post
Level V	8	6	53.3	39.6
Bootcamp	6	5	6.0	6.0
Level V LIO	6	5	36.0	28.8
Treatment: After term served	2	0	52.5	--
Treatment: Suspended on Success	0	1*	--	48.0*
Habitual (4214b)	0	1	--	Life
Total Number Sentenced	22	18		

Table 3: Continued

Tier 3:

Pre: 100 grams + cocaine Minimum Sentence: 15 Years	Post: 100 grams + cocaine Minimum Sentence: 8 Years minus 6 mos. Level IV
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Type of Sentence	Number Sentenced		Avg. Sentence (Mos.)	
	Pre	Post	Pre	Post
Level V	3	9	140	75.8
Bootcamp	0	2	--	6.0
Level V LIO	17	14	47.3	40.2
Treatment: After term served	0	1	--	24.0
Treatment: Suspended on Success	0	0	--	--
Total Number Sentenced	20	26		

* Treatment: Suspension upon success is not a Truth in Sentencing term where at least 75 percent of the sentence is served before release from Level V. Rather the “suspension upon success” sentence, which is also known as an “addiction sentence,” can be suspended upon successful completion of a DOC Level V drug treatment program. This program is often completed and the offender released within 15 months.

PWITD Narcotic Cases (16 §4751)
Changes for Repeat Drug Offender Superior Court Cases

DOC Bed Savings: 125

As noted earlier, while the total charges in Superior Court for drugs increased between 2002 and 2004, the number of PWITD narcotic charges decreased by 14 percent from 1,740 to 1,491. Cocaine and heroin are the primary types of drug cited as narcotic cases.

Interestingly, however, about the same number of offenders are sentenced to Level V in 2004 as in 2002, respectively 176 versus 173. However, the path, to this very similar finding is full of twists and turns, which point out some of the complexities of the criminal justice processes.

For instance, the conviction rate was higher in 2004 at 32 percent (versus 24 percent in 2002) and resulted in a greater number of the PWITD narcotic charges convicted for PWITD or PWITD lesser-included Superior Court charges. There were 471 PWITD or LIO convictions in 2004 versus 420 in 2002. But the increased PWITD narcotic conviction rate was offset by a lower JDI in 2004 (37 versus 41 percent) resulting in almost the same number of persons being admitted to Level V as in 2002 – back to 176 Level V sentences in 2004 versus 173 in 2002.

Yet, the end result of nearly equal Level V admissions before and after HB 210 is a DOC beds savings of 125.

Because overall admissions are nearly equal in 2002 and 2004, only a decrease in sentence length can yield such a savings. Much of the savings can be attributed to the HB 210 reduction of the minimum mandatory for repeat PWITD narcotic cases from the five to three year range. This change caused a sizable shift of the 5 year plus minimum sentences that occurred prior to HB 210 to the “grouping” around the new 3 year minimum sentences (See Table 4).

It is interesting to note that for the few PWITD narcotic terms in the 5 year plus category that half of them were “addiction sentences” where an offender’s long Level V term is suspended after he or she completes the DOC prison treatment program. While the average sentence for these addiction sentences was 79 months, the prison drug program is usually completed within 15 months.

Table 4:
Change in Minimum Mandatory Sentences
for PWITD Narcotic and Lesser-Included-Convictions

Sentences 3 to 5 years:

Pre: Not Minimum Mandatory		Post: New Minimum Mandatory		
Type of Sentence	Number Sentenced		Avg. Sentence (Mos.)	
	Pre	Post	Pre	Post
Level V	4	23	39.0	37.0
Level V LIO	9	2	38.0	36.0
Treatment: After Term Served	1	2	36.0	36.0
Treatment: Suspended on Success	9*	7*	40.0*	44.6*
Habitual (4214a)	1	0	36.0	--
Total Number Sentenced	24	34		

Sentences 5+ years:

Pre: Pre HB210 Minimum Mandatory Threshold		Post: Still Minimum Mandatory		
Type of Sentence	Number Sentenced		Avg. Sentence (Mos.)	
	Pre	Post	Pre	Post
Level V	32	13	90.8	63.3
Level V LIO	2	0	60.0	--
Treatment: After term served	2	2	60.0	60.1
Treatment: Suspended on Success	12*	15*	77.8*	79.1*
Habitual (4214a)	1	0	84	--
Habitual (4214b)	0	1	--	Life
Total Number Sentenced	49	31		

*Treatment: Suspension upon success is not a Truth in Sentencing term where at least 75 percent of the sentence is served before release from Level V. Rather the "suspension upon success" sentence, which is also known as an "addiction sentence," can be suspended upon successful completion of a DOC Level V drug treatment program. This program is often completed and the offender released within 15 months.

PWITD Non- Narcotic Cases (16 §4752)
Changes for Repeat Drug Offender Superior Court Cases

DOC Bed Savings: 28

The number of PWITD non-narcotic charges in Superior Court remained almost even between 2002 and 2004, 864 versus 860 respectively.

Interestingly however, the number of charges being convicted of a PWITD non-narcotic charge or a lesser-included charge increased from 200 in 2002 to 251 in 2004. However, as occurred with the PWITD narcotic charges, the increase in the conviction rate was offset by a proportional decrease in the judicial decision to incarcerate. As such, the number of offenders receiving a Level V sentence was almost equal in the pre and post HB 210 periods: there were 46 PWITD non-narcotic charges resulting in a Level V sentences in 2002 and 43 in 2004.

Yet, the end result of nearly equal Level V admissions before and after HB 210 was a DOC beds savings of 28.

This bed savings can be attributed to the decreased number of Level V sentences in the 3 years and higher minimum sentence range. The number of sentences at or above the 3-year threshold was 18 prior to HB 210 and 10 after the HB210. As with the PWITD narcotic crimes, sentences above the 5 year threshold are almost entirely reserved for suspendable drug treatment sentences and in one case a habitual offender sentence.

Because HB 210 did not change the minimum mandatory 3 year for repeat PWITD non-narcotic charges, the reduction in minimum sentencing in this case is limited to the HB 210 limitation of using only prior convictions for PWITD (16 §4751 and §4752, Drug Trafficking (16 §4753A), and Selling Drugs to Minors (16 §4761) to trigger a repeat (16 §4763) PWITD non-narcotic minimum mandatory sentence.