



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET

July 18, 2007

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

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

SUBJ: Felony C Sentencing Patterns and
SENTAC Compliance for 2004 & 2005

Purpose and Context

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

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

When a Felony C charge receives a “credit for time served” sentence for time spent in pretrial detention, it is counted as a Level V term and is viewed as being in compliance with SENTAC guidelines. The length of time spent in detention determines whether the term is considered a



jail sentence (one year or less at Level V), or prison sentence (greater than one year at Level V). Superior Court sentence order language varies when a defendant is sentenced to ‘time served.’

One of the difficulties of preparing a SENTAC compliance study is that “time served” information is not collected or stored in a standard format by the courts. In this analysis, time served sentence identification relied on a combination of explicit and implicit indicators found in sentence orders and Department of Correction’s detention records. This process provides the most accurate time served sentencing information and accounts for 140 cases that would not have been counted as a Level V sentences. Completing the credit for time served in pre-trial detention research increases the number of Level V Felony C cases from 202 to 342 out of a total of 439 Felony C cases.

SENTAC Guidelines and Compliance

The presumptive SENTAC sentence for a Felony C conviction is a Level V term up to 30 months. In 2005, there were a total of 439 Felony C cases. Of these 439 cases, 342, or 78 percent, have sentences that meet the Level V SENTAC guidelines. This percentage is up slightly from 2004 where there were a total of 431 Felony C cases, with 321, or 74.5 percent, compliant with SENTAC guidelines. These percentages are also referred to as the Judicial Decision to Incarcerate (JDI). There are three cases in 2005 that have a guilty Felony C disposition that is the “most serious offense,” but have not been sentenced at the time of analysis. Prior to sentencing for these cases, the offender absconded and a capias was subsequently issued.

Of the 342 Level V Felony C sentences, 66 cases (19 percent) were above the 30-month presumptive threshold.

Addiction Sentences

Forty-three (12.5 percent) of the 342 SENTAC compliant sentences were “addiction sentences.” Addiction sentences are efforts to embrace the SENTAC principle of rehabilitation within a sentencing guideline framework. An addiction sentence allows for the suspension of Level V time upon successful completion of a Department of Correction’s treatment or boot camp program. Failure to successfully complete the prison treatment program could result in the offender serving the remainder of the term at Level V.

The average sentence length for addiction sentences is often longer than a regular SENTAC sentence. The added Level V time serves as incentive for the offender to successfully comply with the sentence order and the Department of Correction. In 2005, the average Felony C addiction term was almost 79 months and the average boot camp term was 81 months.

2004-2005 Felony C Sentencing Comparison

Of the 436 Felony C cases in 2005 that have been sentenced, 78.4 percent received some type of Level V time, including credit for time served sentences, boot camp sentences, or “addiction sentences.”

The total number of cases in 2005 where a Felony C charge at the time of sentencing increased by only five cases since 2004. However between 2004 and 2005 there is a significant increase in prison sentences. In 2004, 75 Felony C offenders received a prison term greater than one year. In 2005, this count increased to 99, up 32 percent. There could be many reasons for this increase, but it is interesting to note that the prison increase was accompanied by a decrease of eighteen sentences to Level III and IV. Another interesting shift in sentencing is a moderate increase of nine cases sentenced to boot camp in 2005. This change appears to be associated with the twelve case decrease in prison addiction sentences. Jail sentences remain very similar from 2004 to 2005.

The average length for a non-addiction prison sentence in 2005 was 44.85 months, up six months from the 38.85 month average in 2004. The average length for a non-addiction jail sentence in 2005 was 3.67 months, down 15 days from 4.17 months in 2004.

Findings by Type of Crime

In 2005, fourteen different statutes had cases that resulted in a Felony C conviction. Of the 439 cases in 2005, 372 (84.7 percent) are Title 16 4751 Possession With Intent To Deliver drug cases. The second most frequent statute resulting in a Felony C conviction in 2005 was Rape 4th with 40 cases (9.1 percent). The remaining 27 Felony C cases are distributed across twelve other statutes.

Thirteen different statutes had cases that resulted in a Felony C conviction in 2004. Title 16 4751 Possession With Intent To Deliver drug cases were again in the majority with 247 cases (76.9 percent). Similar to 2005, in 2004 Rape 4th was the second most frequent statute for a Felony C conviction with 47 (14.6 percent) cases. Eleven other statutes made up the remaining 27 cases.

**SENTAC Sentencing Patterns for
Felony C Sentences in 2004 & 2005**

(Based on the Sentence for the Most Serious Felony C Charge within the Case)

Standard SENTAC Based Sentencing Totals								
Disposition Year	Level V Prison	Level V Jail	Level IV	Level III	Level II	Level I	No Sentence	Totals
2004	75	201	43	63	4	0	0	386
2005	99	200	37	51	5	0	3	395

Average Level V Prison Sentence Time for 2005 Felony C Convictions = 44.85 Months

Average Level V Prison Sentence Time for 2004 Felony C Convictions = 38.85 Months

Average Level V Jail Sentence Time for 2005 Felony C Convictions = 3.67 Months

Average Level V Jail Sentence Time for 2004 Felony C Convictions = 4.17 Months

Addiction and Boot Camp Sentencing Totals								
Disposition Year	Level V Prison	Level V Jail	Level V Boot Camp	Level IV	Level III	Level II	Level I	Totals
2004	23	0	22	0	0	0	0	45
2005	11	1	31	1	0	0	0	44

Average Level V Prison Addiction Sentence Time for 2005 Felony C Convictions = 78.55 Months

Average Level V Prison Addiction Sentence Time for 2004 Felony C Convictions = 75.13 Months

Average Boot Camp Sentence Time for Non-Indefinite 2005 Felony C Convictions = 67.64 Months

Average Boot Camp Sentence Time for Non-Indefinite 2004 Felony C Convictions = 81 Months

Judicial Decision to Incarcerate (JDI Rate) for 2005 SENTAC and Addiction Sentences = 78.4%

Judicial Decision to Incarcerate (JDI Rate) for 2004 SENTAC and Addiction Sentences = 74.5%

2005 Sentencing for Felony C Cases where a Felony C Conviction is the Most Serious Offense at the time of Sentencing

Most Serious Felony C Statute in a Case: By Statute and Level of Sentencing

Credit for Time Served Counted as Level V

	Violent Felony C Sentences												Non Violent Felony C Sentences			
<u>Title</u>	11	11	11	11	11	11	11	11	11	16	16	31	11	11		
<u>Section</u>	612AFC**	632FC	770FC	773FC***	783FC	803FC	826FC	836FC	1112AFC	4751FC	4761FC	3913FC	841FC	1458FC		
<u>Description</u>	Asslt 2nd	Manslaughter	Rape 4th	USI 3rd	Kidnap 2nd	Arson 1st	Burg 1st	Carjack 1st	SexSolChild	PWITD Narc	Dist Minor	Infirm Resou	Theft>\$100000	Remove Firearm		
<u>Sentac Levels</u>															Total	% of Total
No Sentence Yet										3					3	0.68%
II										5					5	1.14%
III			2		2					47					51	11.62%
IV										1					1	0.23%
IV Home Confinement			7	1						25			1		34	7.74%
IV Treatment										1					1	0.23%
IV Work Release			1							1					2	0.46%
V Boot Camp										31					31	7.06%
V Jail Treatment										1					1	0.23%
V Prison Treatment			1			1		1	1	8					11	2.51%
Jail	1		19						1	175		1	1	2	200	45.56%
Prison		1	10		1	1	5	1	2	74	1		1	2	99	22.55%
Totals	1	1	40	1	3	2	5	1	4	372	1	1	3	4	439	100.00%
Total Level V	1	1	30	0	1	2	5	1	4	289	1	1	2	4	342	
% of Total	0.23%	0.23%	9.11%	0.23%	0.68%	0.46%	1.14%	0.23%	0.91%	84.74%	0.23%	0.23%	0.68%	0.91%	100.00%	

* Felony C Sentences have a 'Presumptive Sentence' of Zero to Thirty Months at Level V for a Violent Felony and Zero to One Year at Level V for any Non Violent Felony.

** This Assault 2nd occurred in 1987. The defendant was on a capias until 2005 when he was extradited and then sentenced.

***This Unlawful Sexual Intercourse 3rd occurred in 1998 and was not disposed of until 2005.

2004 Sentencing for Felony C Most Serious Offense by Statute and Time for Total Sentences

"Sentences with 'Time Served' Counted as Level V"

SENTAC Levels	Violent Felony C Sentences										Non Violent Felony C Sentences			Total	% of Total
	1105310FC ¹	1106130FC ²	1107700FC	1107730FC ³	1107830FC	1108030FC	1108260FC ⁴	1108360FC	111112AFC	1647510FC	11913A0FC	1108410FC	1114580FC		
	Att Fel C	Asslt 1st	Rape 4th	USI 3rd	Kidnap 2nd	Arson 1st	Burg 1st	Carjack 1st	Sex Sol Child	PWITD Narc	Health C Fraud	Theft>\$100,000	Rem Firearm		
Level I														0	0.0%
Level II					1					3				4	0.9%
Level III			2			1				58				61	14.2%
Level IV Other			3		1					36	1			41	9.5%
Level IV VOP Cent										2				2	0.5%
Level V Deferred ^d										2				2	0.5%
Level V Boot Camp										22				22	5.1%
Level V Prison Addiction	1		2							20				23	5.3%
Level V Jail			34	1	2	1		1	4	153	1	3	1	201	46.6%
Level V Prison		2	11	1		2	4		2	52		1		75	17.4%
Totals	1	2	52	2	4	4	4	1	6	348	2	4	1	431	100.0%
Total Level V	1	2	47	2	2	3	4	1	6	247	1	4	1	321	
% of Total	0.3%	0.6%	14.6%	0.6%	0.6%	0.9%	1.2%	0.3%	1.9%	76.9%	0.3%	1.2%	0.3%		

* Felony C Sentences have a 'Presumptive Sentence' of zero to thirty Months at Level V for a Violent Felony and zero to one Year at Level V for any Non Violent Felony.

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

² These Assault 1st Crimes were pled from Attempted Murder 1st. The Assault 1st Statute changed June 29, 2003 from a Felony C to a Felony B.

³ These Unlawful Sexual Intercourse 3rd Crimes occurred before September 8, 1998 when this Statute was retired.

⁴ Burglary 1st has a two year mandatory as of July 2003 when House Bill 210 was enacted.

⁵ Possession With Intent To Deliver a Narcotic has a Minimum Mandatory for "Repeat Offenders" of 3 years except for Heroin which is 5 years as of July 2003 when House Bill 210 was enacted.

⁶ Level V Deferred refers to Sentences where the defendant was Sentenced to Level V with an effective date set later than the Sentence Date with a Review of Sentence scheduled before the effective date. In both cases the defendants were re-sentenced for VOP's prior to the Level V Effective Date.