



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET

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TO: Judge William Carpenter, Chair SENTAC and
The Criminal Justice Statistical Review Committee

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SUBJ: Update: Felony C Sentencing Patterns and
SENTAC Compliance for 2004 through 2009

Purpose and Context

The following analysis summarizes Superior Court sentencing patterns for Felony C cases with guilty dispositions for calendar years 2004 through 2009. 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 statutory sentencing range for a Violent Felony C conviction is 0 to 15 years at Level V. The SENTAC presumptive guidelines sentencing range for a Violent Felony C conviction is a Level V term up to 30 months. 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 the combination of a distinct SBI and sentence date where at least one Felony C charge had a Superior Court conviction, with that guilty Felony C 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. The application of this type of sentencing on secondary charges in a case is in compliance with SENTAC guidelines (Benchbook 2010.) In addition, this analysis excludes lead charge Felony C’s that were sentenced to Diversion and First Offender Programs as it remains difficult to gather an accurate count of these types of dispositions due to them often being overwritten when individuals complete or fail their programs.



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SENTAC Guidelines and Compliance

The statutory sentencing range for a Violent Felony C conviction is 0 to 15 years at Level V. The presumptive SENTAC sentencing guidelines range for a Violent Felony C conviction is a Level V term up to 30 months and a Level V term up to 24 months for a Non-Violent Felony C. The 30 and 24 month terms are reduced to 22 months and 9 months respectively for Violent and Non-Violent Felony C convictions involving Acceptance of Responsibility Guidelines (Benchbook 2010.) Under Acceptance of Responsibility an offender's expeditious plea can result in a less severe sentence.

The above mentioned SENTAC sentencing guidelines can be deviated from for a number of reasons. There are SENTAC aggravating enhancements for prior criminal history categories that would allow for the increase of the range up to 60 months (5 years) and 120 months (10 years) at Level V. There are also sentencing enhancements specific to certain statutes. An example of a statute specific enhancement is Title 16 § 4763's enhancement of Title 16 § 4751 (PWITD). This sentencing enhancement requires a minimum sentence of 36 months (3 years), or if heroin is involved, 60 months (5 years) at Level V for a repeat conviction of Title 16 § 4751. In addition, Habitual Offender declarations allow for sentences up to life in prison under Title 11 § 4214 (a). All of these sentencing enhancements exceed the high end of the presumptive range for SENTAC guidelines and thus compliance is measured by any Level V term (including credit for time served) up to life in prison.

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. In this analysis, time served sentence identification relied on a combination of explicit or implicit indicators found in sentence orders and was then compared and confirmed with Department of Correction detention records.

SENTAC Sentencing Compliance

Table 1 shows the Judicial Decision to Incarcerate (JDI) percentages for lead charge Felony C's from calendar years 2004 through 2009. The JDI is a measure of the number of Felony C's sentenced to some type of Level V and a JDI of 100 percent for Felony C cases would indicate full SENTAC compliance. The majority of the lead charge Felony C sentences were part of plea agreements, and thus while the judge has final discretion in the sentencing decision, the actual JDI rate is a product of the adversarial process where negotiations between the attorney general and the defense attorney yield a plea bargain with a sentencing recommendation for the judge to consider. The JDI has ranged from a low of 74.48 percent in 2004 to a high of 79.27 percent in 2007. The overall average JDI for the 6 calendar years is 77.26 percent.

Table 1
SENTAC Compliant Sentences for Felony C Cases
Calendar Years 2004-2009

Year	# Of Felony C Sentences	# of Level V Sentences	JDI
2004	431	323	74.94%
2005	436	342	78.44%
2006	411	308	74.94%
2007	521	413	79.27%
2008	436	334	76.61%
2009	403	318	78.91%
Totals/Avgs	2638	2038	77.26%

Chart 1 provides a more detailed view of the sentencing types for compliant Felony C lead charges by showing a distribution of sentences for each calendar year by sentence type. As can be seen in Chart 1, time served sentences are the most likely type of compliant sentences ranging from a low in 2006 of 34.4 percent to a high of 43.7 percent in 2009. The average for Felony C time served compliant sentences over the 6 year series was 40.3 percent. Prison sentences (terms of greater than one year) were the second most frequent type of sentence accounting for 25.3 percent of the compliant sentences. Prison sentences are closely followed by jail sentences (terms of one year or less) as the next most likely Felony C compliant sentences over the 6 year series with a mean of 23.1 percent.

Chart 1

SENTAC Compliant Sentences for Felony C Cases by Sentence Type

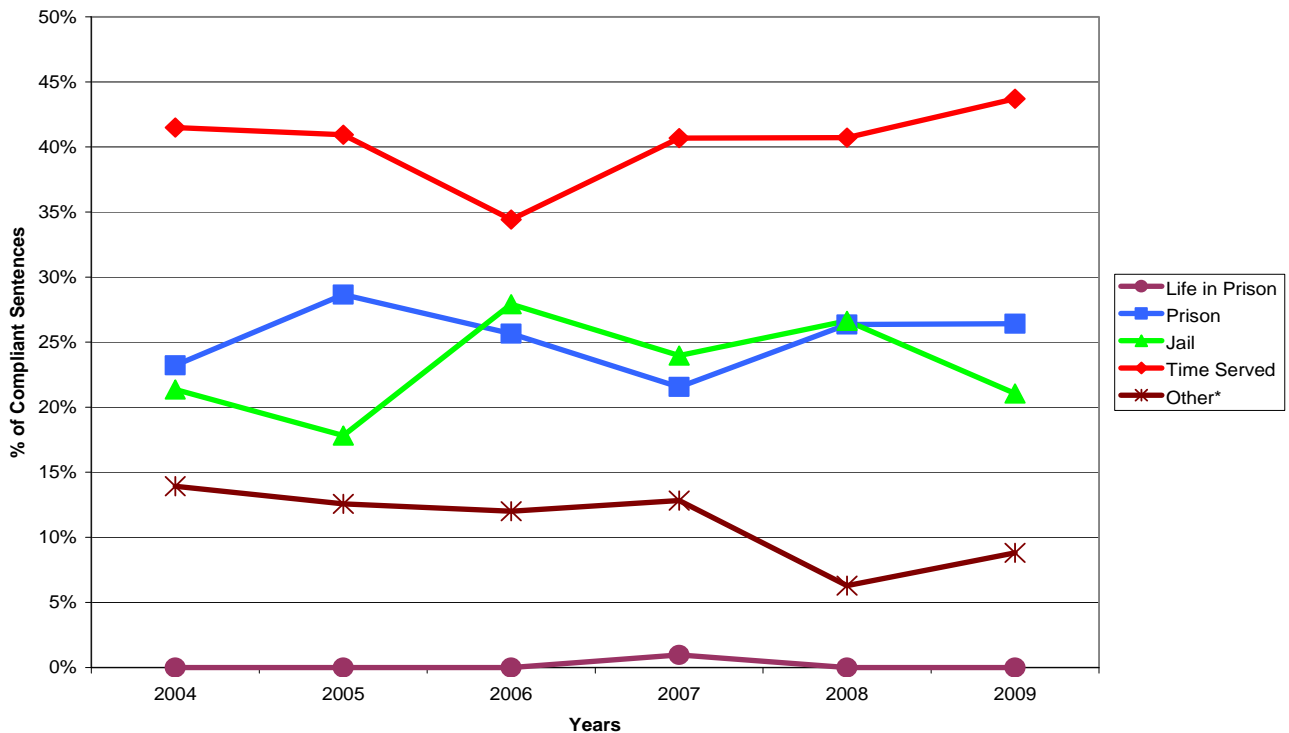


Chart 1 also illustrates a trend that is worth noting because of its possible policy and financial impact. The types of sentences for ‘Other’ sentence types, which consist of addiction (suspended after successfully completing treatment) and Boot Camp, typically result in the actual time served being no shorter than 6 months in Boot Camp and up to 2 years for some treatment programs. As can be seen in Chart 1, the ‘Other’ category of sentences seems to be decreasing while prison and time served sentences are simultaneously increasing. From 2007 to 2008 the percentage of compliant sentences to ‘Other’ decreased by over half from 12.8 percent to 6.3 percent of all Felony C lead charge compliant sentences. In 2009 the percentage went up slightly to 8.8 percent, but remained well below the 12.8 percent from 2007. Finally, Chart 1 shows that over the 6 year time series life terms are rarely given to lead charge Felony C convictions accounting for only 4 sentences in 2004 with all being habitual offender sentencing enhancements.

SENTAC Non-Compliant Sentencing

Over the 6 year time series, almost 23 percent of the lead charge Felony C sentences were not compliant with SENTACE guidelines as they did not involve any Level V sentences. Table 2 shows the sentencing distributions of the Felony C cases that were ‘non-compliant.’ The percentage of non-compliant cases ranged from 21 percent to 25 percent over the 6 year period. Level III probation (*Intensive Supervision*) was the most likely non-compliant Felony C sentence with a range of 47.1 to 64.8 percent of the non-compliant cases. Level IV (Quasi-Incarceration) is the next most likely sentence for non-compliant Felony C lead charges with a range of 28.2 to 43.1 percent of the non-compliant sentences. The most infrequent sentence for non-compliant lead charge Felony C’s was Level II ranging between 3.7 and 15.3 percent of the non-compliant Felony C lead charges.

Table 2
Non-Compliant SENTAC Guideline Sentences for Felony C Cases
Calendar Years 2004-2009

Sentence Type by Case	2004		2005		2006		2007		2008		2009	
	N	% of Non-Level V	N	% of Non-Level V	N	% of Non-Level V	N	% of Non-Level V	N	% of Non-Level V	N	% of Non-Level V
Level IV Sentences	43	39.8%	38	40.4%	29	28.2%	31	28.7%	44	43.1%	28	32.9%
Level III Sentences	61	56.5%	51	54.3%	62	60.2%	70	64.8%	48	47.1%	44	51.8%
Level II Sentences	4	3.7%	5	5.3%	12	11.7%	7	6.5%	10	9.8%	13	15.3%
Total Non-Compliant Sentences	108	100.0%	94	100.0%	103	100.0%	108	100.0%	102	100.0%	85	100.0%

Felony C Case Sentencing Comparisons (TIS)

Chart 2 shows a detailed breakout of the total number of sentences for lead charges in Felony C cases by year. Time served remained the most common sentence across all six years with the number of prison and jail sentences being significantly lower. As stated previously, the most common non-compliant Felony C lead charge sentence is an intensive supervision Level III probation sentence with very few lead charges receiving regular probation (Level II) or administrative probation (Level I).

Chart 3 illustrates the percentage of each type of Felony C lead charge at each sentencing level. Showing the percentage provides a standardized way to view Felony C sentences from year to year. For instance there was a spike in the total number of time served sentences in 2007. However the percentage chart (Chart 3) shows that proportionally the spike did not represent an aberration from other years' sentencing results. Rather, the spike was related to higher than usual volume of Felony C cases. Chart 3 also shows that Addiction, Boot Camp, and direct Level III sentences are trending downward over the last 3 years, of which has resulted in a shift to more prison and time served sentences.

Chart 2

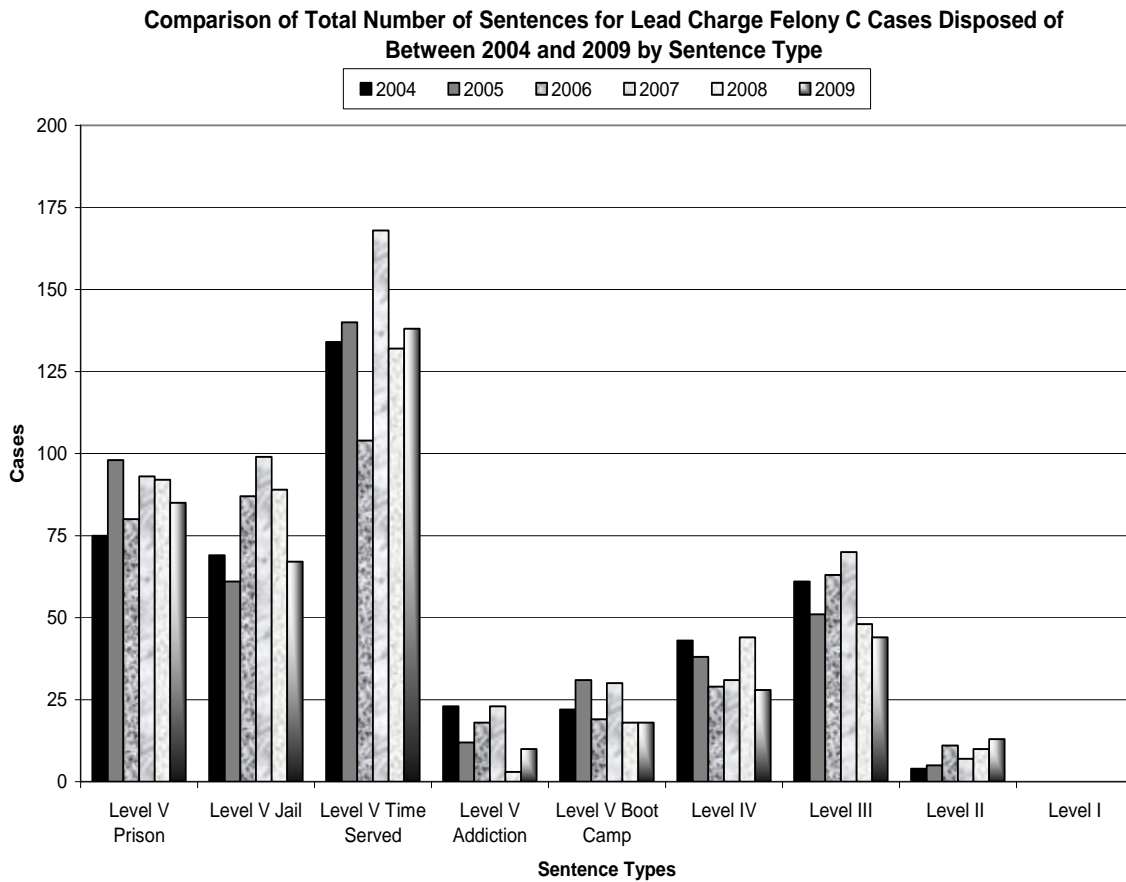
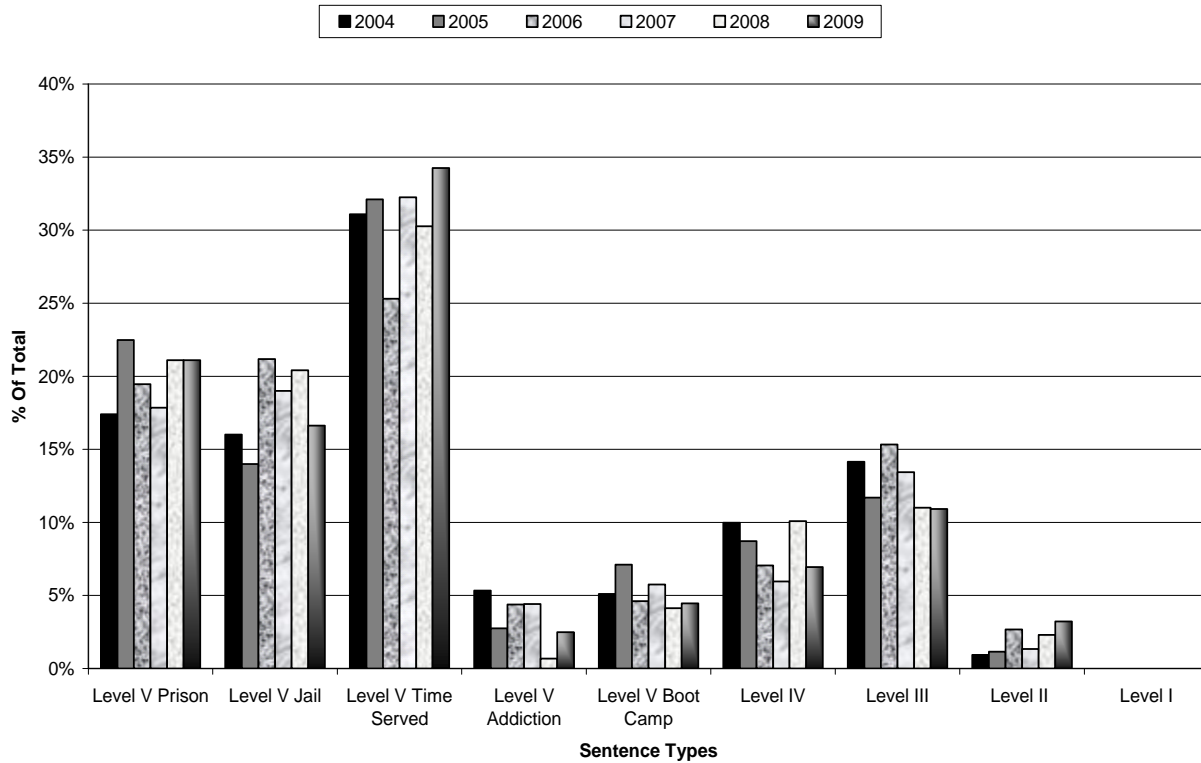


Chart 3

Comparison of Total Percentage of Sentences for Lead Charge Felony C Cases Disposed of Between 2004 & 2009 by Sentence Type



Sentence Lengths: A Possible Association with Delaware Felony Arrest Histories

Chart 4 shows the sentence length patterns for the different types of sentences. Over the six year time series, the average prison sentence was 44 months, the average jail sentence was 7.7 months, and the average credit for time served sentence length was 2.1 months. Addiction and boot camp sentences appear to have longer sentence lengths, but as previously mentioned, these sentenced are suspended upon successful completion of court appointed treatment programs. The average sentence length over the 6 year time series was 93 months for addiction sentences and 44.5 months for boot camp sentences. Boot camp sentences are typically completed in 6 months and addiction sentences in about 9-24 months. The difference between the average prison and jail sentence ranged from 30 to 40 months. The difference between average jail and time served sentence lengths ranged from 5 to 7 months. With these differences between prison, jail, and time served sentence lengths, additional analysis was conducted to see if a correlation could be drawn between average sentence lengths and an individual’s Delaware felony arrest history.

Chart 4

Average Sentence Lengths for all Level V Sentences

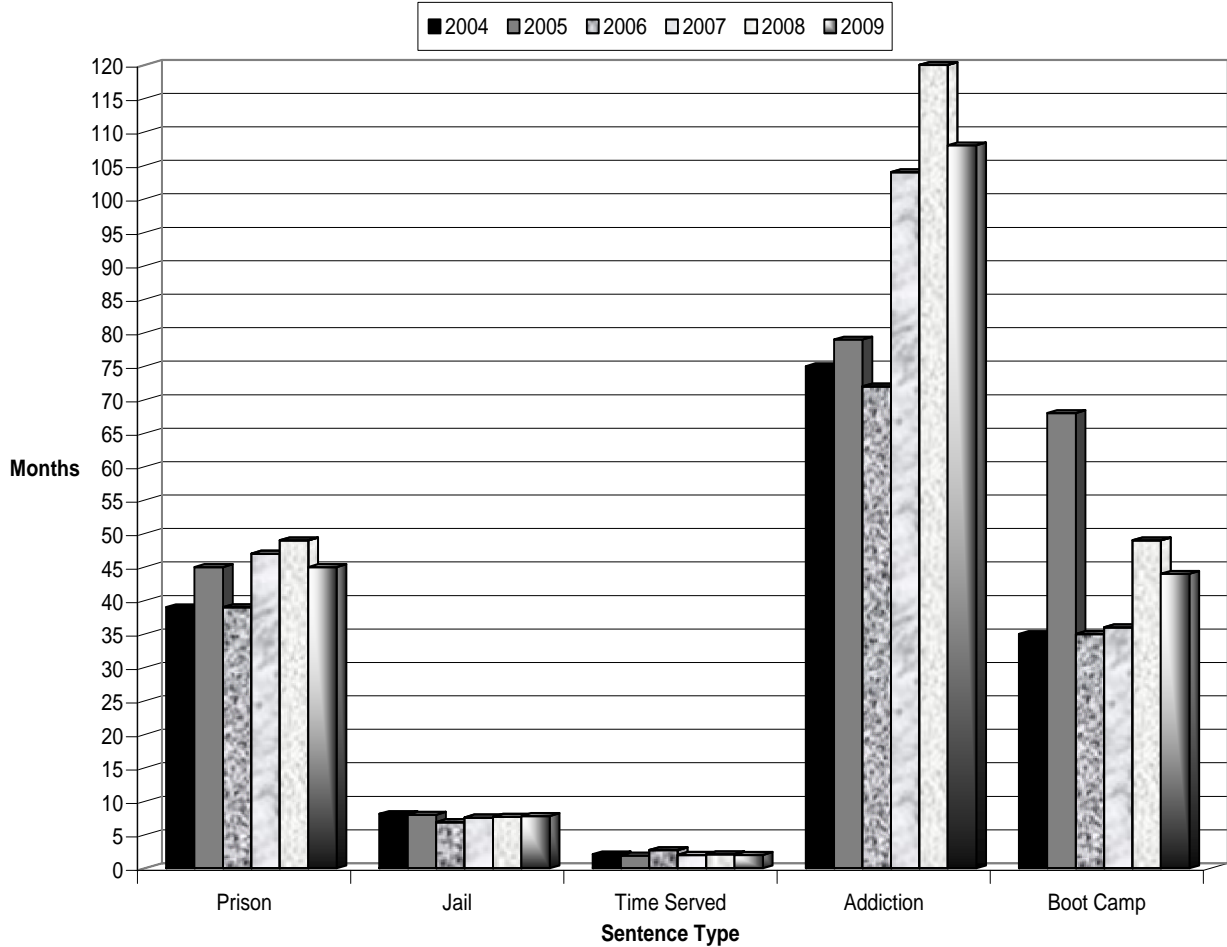


Table 3 on the next page shows how the average number of prior Delaware felony arrest events relate with the type of sentence that the individual received for their ‘lead charge’ in the Felony C case. The arrest events counted are prior Titles 11, 16, and 21 felonies that occurred in Delaware prior to the arrest event that was associated with the Felony C being analyzed for all 2009 Felony C cases, thus the arrest event that occurred to produce the current Felony C case is not counted in Table 3.

Table 3 shows that upon conviction of a Felony C charge there is a general correlation between the severity of the sentence and individuals with a more extensive Delaware felony arrest history. For instance, an offender sentenced to prison has an average of 5.5 prior Delaware felony arrests, while individuals doing jail time have an average of 3.5 prior Delaware felony arrests. An interesting note is that all sentence types, even the least severe sentence of Level II, have some level of average felony arrest histories.

Table 3
2009 Felony C Cases
Prior Delaware Felony Arrest History¹

Sentence Type	N	% of N	Avg # of Prior DE Felony Arrests
Level V Prison	84	20.8%	5.51
Level V Jail	67	16.6%	3.49
Level V Boot Camp	18	4.5%	3.3
Level V Addiction	10	2.5%	2.9
Level V Time Served	139	34.5%	2.53
Level IV	28	6.9%	2.75
Level III	44	10.9%	2.18
Level II	13	3.2%	2.23
Level I	0	0.0%	n/a
Total	403	100.0%	3.05

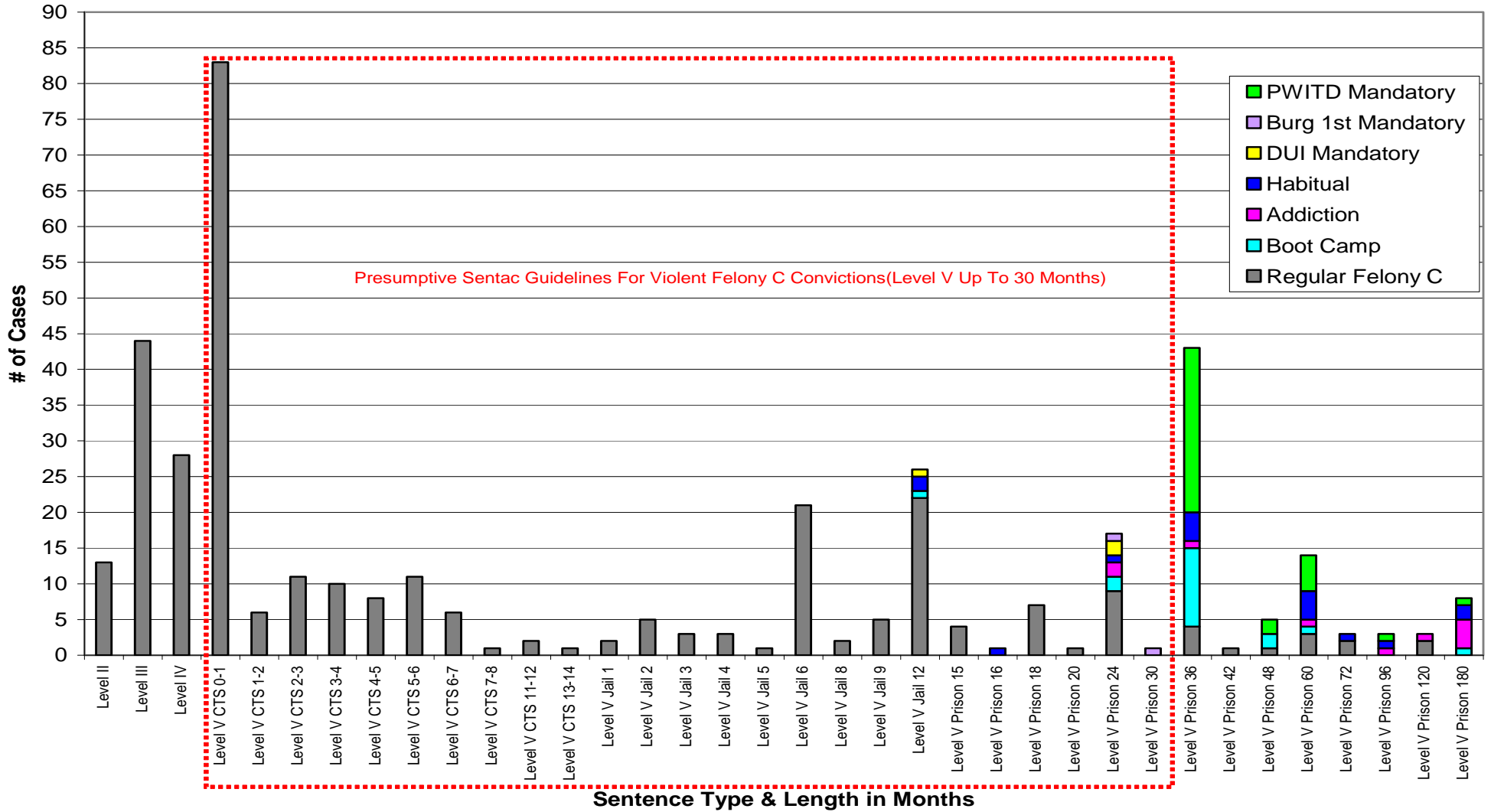
¹ A Prior Delaware Felony Arrest is defined as any Title 11, 16, or 21 arrest event that may include multiple cases, where at least one Felony was included in the arrest charges.

There are numerous elements that make up the complete picture for sentencing. Table 3 illustrates one element that has a role in why specific types of individuals are sentenced to harsher consequences for their actions. Felony C cases that were sentenced to Prison on average had 2 more prior Delaware Felony arrests than those individuals going to Jail. The most significant difference in the average number of prior Delaware Felony arrests was from Prison (5.51) to Level III (2.18).

Chart 5 on page 9 shows a frequency distribution for calendar year 2009 for lead charge Felony C sentencing by type and length of sentence in months if the sentence is a Level V term. The red box on the chart frames the standard SENTAC presumptive sentence for Violent Felony C convictions of up to 30 months Level V. A number of noteworthy items are apparent on the chart. First, once the threshold of 30 months is exceeded it becomes very common for statutory enhancements and indefinite sentences to be used. For these longer sentences, repeat drug selling (16 4763) minimums, Burglary 1st minimums, addiction and boot camp sentences are commonly invoked. Most compliant Felony C terms (up to 30 months Level V) are associated with 'regular' Felony C terms. It is interesting that the most common Felony C Level V term is a credit for time served sentence ranging from 1 day to 1 month. The chart also shows that the majority of the non-compliant sentences (Non-Level V) go directly to Level III probation.

Chart 5

Lead Charge Felony C Sentence Types by Sentence Length for Calendar Year 2009



* As previously mentioned, Diversion/FOP and problem cases were not included in this analysis.

Findings by Type of Crime

Table 4 shows a breakout of all Felony C lead charge conviction statutes by year. Title 16 § 4751 Possession With Intent To Deliver (PWITD) drug cases are significantly higher than any other type of case accounting for over 80 percent of Felony C lead charge convictions. PWITD cases are followed in volume by 11 § 770 Rape 4th cases. 2007 had the lowest number of distinct statutes for Felony C lead charge convictions with nine and 2005 and 2006 had the highest number of distinct statutes with 14. 2009 is the first year where DUI 7th could be sentenced as a Felony C.

Table 4

Felony C Lead Charge Conviction Statutes by Year*

Charge	2004		2005		2006		2007		2008		2009	
	#	%	#	%	#	%	#	%	#	%	#	%
PWITD Narcotic	348	80.7%	372	84.7%	324	78.8%	447	85.8%	362	83.03%	366	83.56%
Rape 4th	52	12.1%	40	9.1%	55	13.4%	50	9.6%	53	12.16%	55	12.56%
Sexual Solicitation of a Child	6	1.4%	4	0.9%	3	0.7%	6	1.2%	10	2.29%	1	0.23%
Kidnapping 2nd	4	0.9%	3	0.7%	4	1.0%	4	0.8%	1	0.23%	1	0.23%
Arson 1st	4	0.9%	2	0.5%	4	1.0%	2	0.4%	2	0.46%	2	0.46%
Burglary 1st	4	0.9%	5	1.1%	6	1.5%	3	0.6%	1	0.23%	3	0.68%
Theft >\$100,000	4	0.9%	3	0.7%	1	0.2%	4	0.8%	1	0.23%	3	0.68%
DUI 7TH	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.00%	3	0.68%
Unlawful Sexual Intercourse 3rd ¹	2	0.5%	1	0.2%	2	0.5%	0	0.0%	0	0.00%	1	0.23%
Assault 1st ²	2	0.5%	1	0.2%	2	0.5%	0	0.0%	0	0.00%	0	0.00%
Health Care Fraud	2	0.5%	0	0.0%	0	0.0%	0	0.0%	0	0.00%	0	0.00%
Carjack 1st	1	0.2%	1	0.2%	2	0.5%	0	0.0%	0	0.00%	0	0.00%
Remove Firearm	1	0.2%	4	0.9%	3	0.7%	4	0.8%	0	0.00%	2	0.46%
Exploit Resources of an Infirm Adult	0	0.0%	1	0.2%	3	0.7%	0	0.0%	1	0.23%	0	0.00%
Manslaughter ³	0	0.0%	1	0.2%	0	0.0%	0	0.0%	0	0.00%	0	0.00%
Distribution of Narcotic to a Minor	0	0.0%	1	0.2%	1	0.2%	0	0.0%	3	0.69%	1	0.23%
Purchase of a Narcotic from a Minor	0	0.0%	0	0.0%	1	0.2%	0	0.0%	1	0.23%	0	0.00%
Attempted Felony C ⁴	1	0.2%	0	0.0%	0	0.0%	0	0.0%	0	0.00%	0	0.00%
Promoting Prostitution 1st	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	0.23%	0	0.00%
Impersonating Police	0	0.0%	0	0.0%	0	0.0%	1	0.2%	0	0.00%	0	0.00%
Totals	431	100.0%	439	100.0%	411	100.0%	521	100.0%	436	100.00%	438	100.00%

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

¹ Occurred prior to September 8, 1998 when this Statute was retired, but disposed of in 2004, 2005, 2006, and 2009.

² Occurred prior to June 29, 2003 when this Statute was retired, but disposed of in 2004, 2005, and 2006.

³ Occurred prior to June 29, 2003 when this Statute was retired, but disposed of in 2005.

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