

# **Delaware Drug Case Sentencing Patterns: 2007 Superior Court Drug Cases**

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# Sentencing in Delaware

The Delaware Sentencing Accountability Commission (SENTAC) adopted a Master Plan for Sentencing Reform enacted by law in October of 1987.

- Replaced the old ‘in/out’ decision of judges and established goals of SENTAC:
  - Incapacitation of the violent offender
  - Restoring the victim
  - And rehabilitating offenders
- The plan established a 5 Level System of graduated sanctions.

# SENTAC Accountability Levels

- **Level V – Incarceration.** 24 hours a day in a secure correctional facility. Incarceration in DE includes jail, prison, and sentences to life or death within Delaware’s unified system (prison/jail separated by length of stay.)
- **Level IV – Quasi-incarceration.** High level of surveillance in a community setting. Halfway house supervision, home confinement with electronic monitoring, residential treatment facility, and VOP Center.
- **Level III – Intensive Supervision.** Multiple weekly direct and collateral contacts between the probation officer and offender while offender is free in community.
- **Level II – Field Supervision.** One to five hours of supervision per month.
- **Level I – Administrative Supervision.** Initial reporting and a monthly review of computerized arrest records, program participation verification, and payment of fine and restitution verification.

# SENTAC Presumptive Guidelines

Felony A	<u>Level V: 15 Yr. Min. Prison</u>
Felony B	<u>Level V: 2 Yr. Min. Prison</u>
Felony C Violent	<u>Level V up to 2.5 Yrs. Prison</u>
Felony C Non Violent	<u>Level V up to 1 Year</u>
Felony D Violent	<u>Level V up to 2 Yrs. Prison</u>
Felony D Non Violent	<u>Level III up to 2 Years</u>
Felony E Violent	<u>Level V up to 15 Mos. Prison</u>
Felony E Non Violent	<u>Level II up to 2 Years</u>
Felony F Violent	<u>Level V up to 9 Mos. Jail</u>
Felony F Non Violent	<u>Level II up to 21 Months</u>
Felony G Violent	<u>Level V up to 6 Mos. Jail</u>
Felony G Non Violent	<u>Level II up to 12 Months</u>
Misdemeanor A Violent	<u>Level II up to 12 Mos.</u>
Misdemeanor A Non Viol.	<u>Level I up to 12 Months</u>
Misdemeanor A Escape	<u>Level IV up to 3 Mos.</u>
Misd. A Order & Decency	<u>Level I up to 12 Months</u>
Misdemeanor B Violent	<u>Level V up to 2 Mos. Jail</u>
Misdemeanor B Non Viol.	<u>Fines &amp; Restitution</u>
Unclassified Misdemeanor	<u>Fines &amp; Restitution</u>

# Delaware Sentencing Continued

In 1990, the Truth in Sentencing Act was implemented:

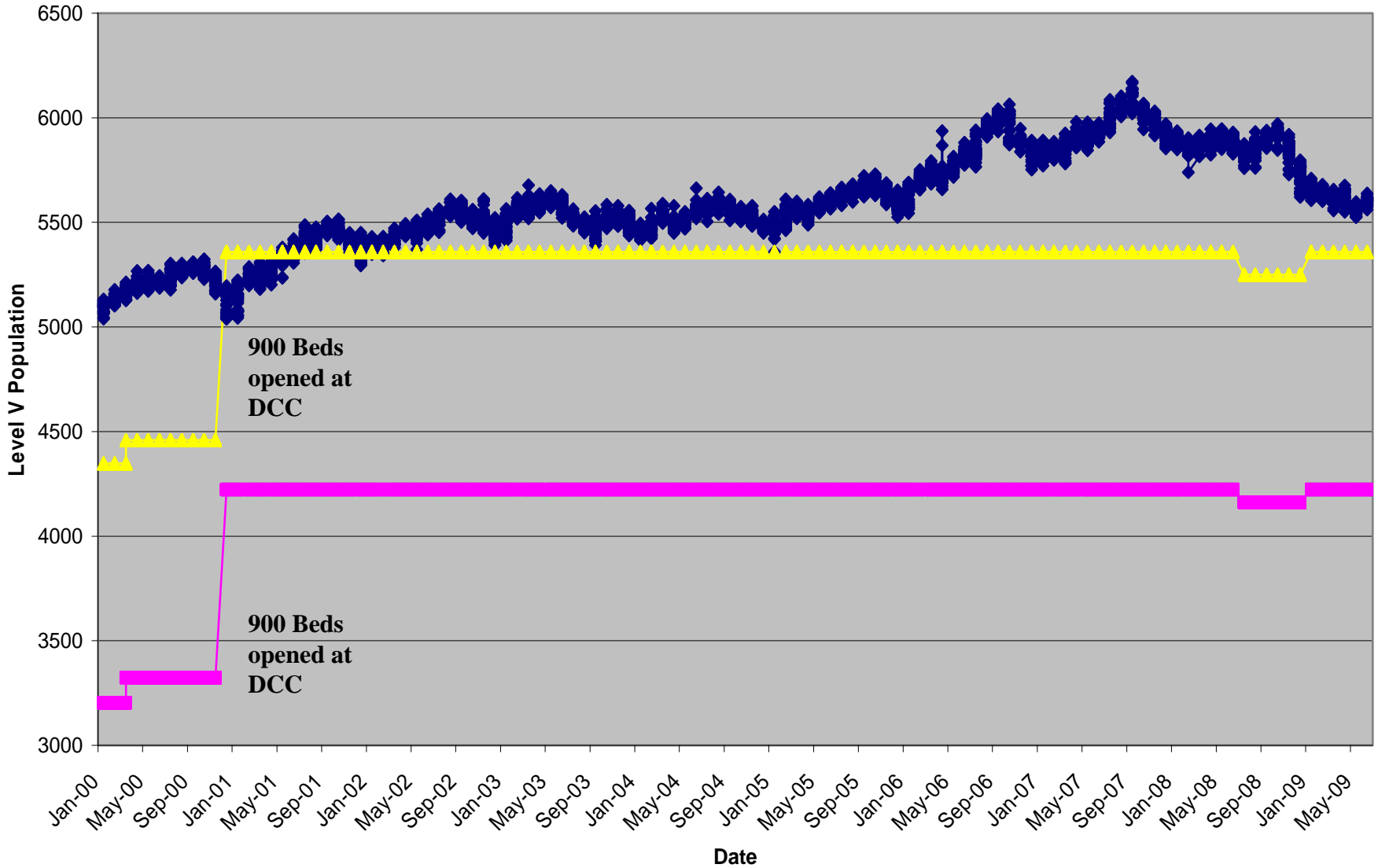
- Standardized the percentage of time served in a correctional facility to at least 75% of the unsuspended portion of the sentenced Level V time.
- Also redefined and regulated good time credits and abolished parole eligibility.
- Reduced offense grades for a large number of crimes, and adjusted terms with the goal of neutral bed impact.

# Corrections in Delaware

Delaware has an integrated Jail-Prison system unlike Virginia and Oregon.

- Prison - > 1 year.
- Jail - < or = 1 year.
- Challenges in Delaware revolve around prison overcrowding and budget constraints.
- Reaching a happy medium between sentencing and DOC overcrowding, all while keeping public safety at a premium.

# Level V Population vs Design and Operating Capacity Jan 00-Jun 09



## Misconceptions about Prison Population

DELSAC was contacted to do this analysis to shed light on common misconceptions about Delaware's prison overcrowding.

- Advocates of abolishing Delaware's Minimum Mandatory drug sentences stated that these Minimum Mandatory drug laws were causing overcrowding.
- Advocates stated that Delaware needed to separate drug sellers from drug users.
  - We need to lock up sellers
  - Provide treatment for users

# Changing Drug Selling Sentences

In 2002 Lawmakers start to look at reducing drug selling sentences.

- HB 436 was introduced
  - This bill proposed that Minimum Mandatory penalties for Drug Trafficking and Repeat PWITD remain in effect, unless the court deemed such penalties excessive, and in such situations, the court could defer the Minimum Mandatory sentence upon completion of a substance abuse program.
    - This was deemed a '*safety valve*' by the bill's authors for cases where Minimum Mandatory sentences were viewed as extreme.

# More Change of Drug Sentences

Mid 2003 HB 210 becomes law

- HB 210 was a compromise bill for advocates who wanted lighter sentences for drug offenders while increasing penalties for many violent offenders
  - Thinking was many were the same offenders.
- This bill was to ensure Delaware's prison space was reserved for violent offenders and to obtain that, space was to be made by removing drug offenders from Prison.

# HB 210's Drug Law Changes

## ■ Drug Law Changes

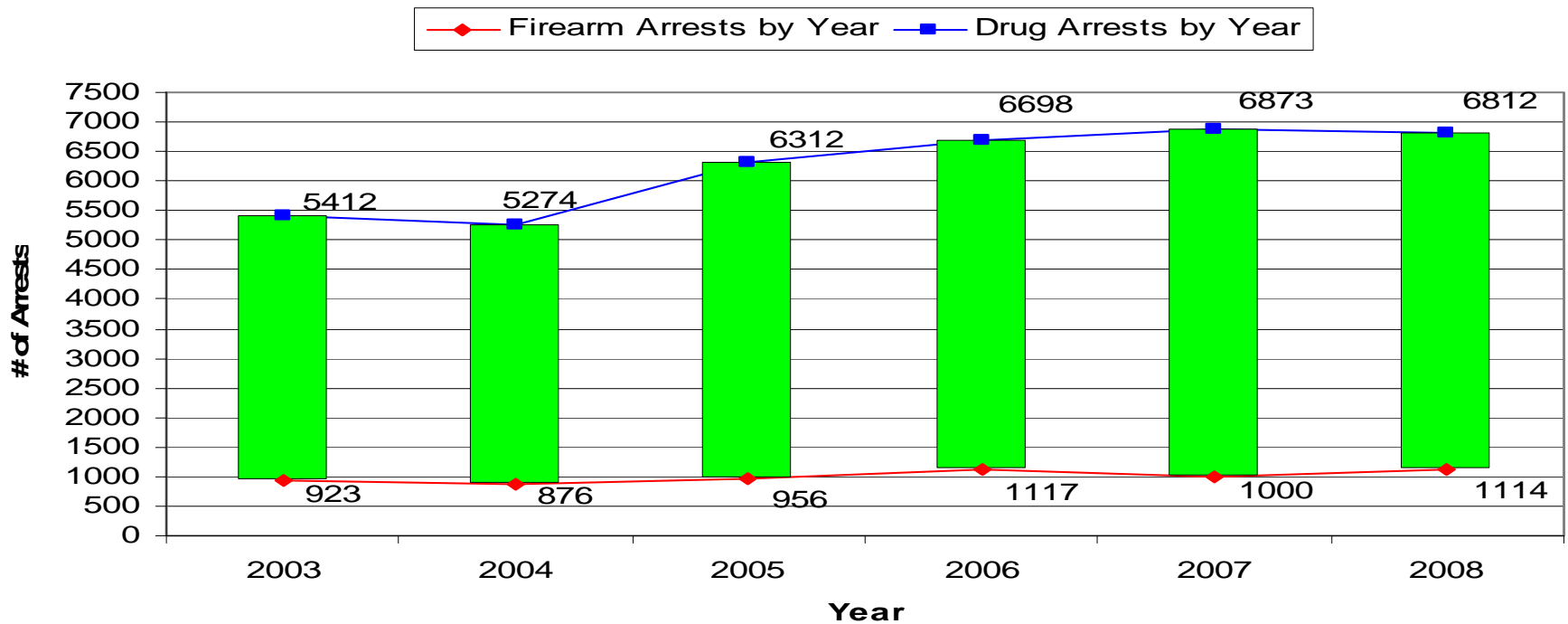
- Trafficking in Illegal Drugs Tier 1 went from a 3 year Mandatory to a 2 year Mandatory
- Trafficking in Illegal Drugs Tier 2 went from a 5 year Mandatory to a 4 year Mandatory
- Trafficking in Illegal Drugs Tier 3 went from a 15 year Mandatory to an 8 year Mandatory
- PWITD 2<sup>nd</sup> offense or > went from a 5 year Mandatory to a 3 year Mandatory (5 years for Heroin) along with making the pre-qualifying offense a drug selling offense rather than any drug offense.

## ■ Violent Offense Changes

- Robbery 1<sup>st</sup> went from 2 year Mandatory to 3 year Mandatory
- Assault 1<sup>st</sup> increased from a Felony C to a Felony B with a new 2-year Mandatory.
- Burglary 1<sup>st</sup> and 2<sup>nd</sup> acquired new 2-year and 1-year Mandatory sentences.

**HB 210's proposed DOC bed savings were nullified by an increase in the number of arrests/convictions coupled with the longer sentences for violent offenses. Drug arrests increased almost 26% from 2003-2008**

**Drug and Firearm Arrests by Year**



# Minimum Mandatory Drug Sentences

2005 began a series of bill proposals from policy makers to abolish Minimum Mandatory sentences for Drug Trafficking and Repeat PWITD.

- 2005 = HB 181
- 2006 = HB 11
- 2007-2008 = HB 32 and HB 71
- 2008-2009 = HB 168
- All had consistent themes of eliminating Minimum Mandatory sentences for drug offenses and giving Delaware's Judiciary more discretion when sentencing drug offenders.

# Purpose of Analysis

With so much attention being drawn to drug offenders, policy makers wanted a clearer picture of drug case sentencing in Delaware.

- DELSAC provided a detailed sentencing profile of Superior Court cases that had at least one drug charge at the time of sentencing for CY2007.
- In this analysis, aggregate terms were used for the total Level V time of a drug case (for all charges in the case) versus just using the sentence time for the drug charges. This will help account for some of the longer terms, and was done to better illustrate drug case sentencing as a whole.

# Case Results

- In 2007, there were 3,020 drug cases in the Superior Court of Delaware.
  - 73% of the cases included only drug offenses while the other 27% included drug and non-drug offenses.
  - Of the 3,020 cases, 218 (7.2%) involved at least 1 charge resulting in a Minimum Mandatory drug term (Trafficking and/or Repeat PWITD.)
    - Of the 218 Minimum Mandatory drug cases, 143 were for Drug Trafficking where the Minimum Mandatory term is 2 years.
      - 32 of the 143 cases were sentenced to Delaware's Adult Boot Camp (6 months).
    - The remaining 71 Minimum Mandatory drug cases were for Repeat PWITD (drug selling) where the Minimum Mandatory term is 3 years.
  - 69% (2,075) of the 3,020 cases were for drug cases with drug charges other than Drug Trafficking and PWITD (X-Foot of, Maintaining Dwelling or Vehicle, and simple possession) while only 31% (945) of the 3,020 cases were for Drug Trafficking and Drug Selling (Minimum Mandatory Cases.)

# Sentencing Results

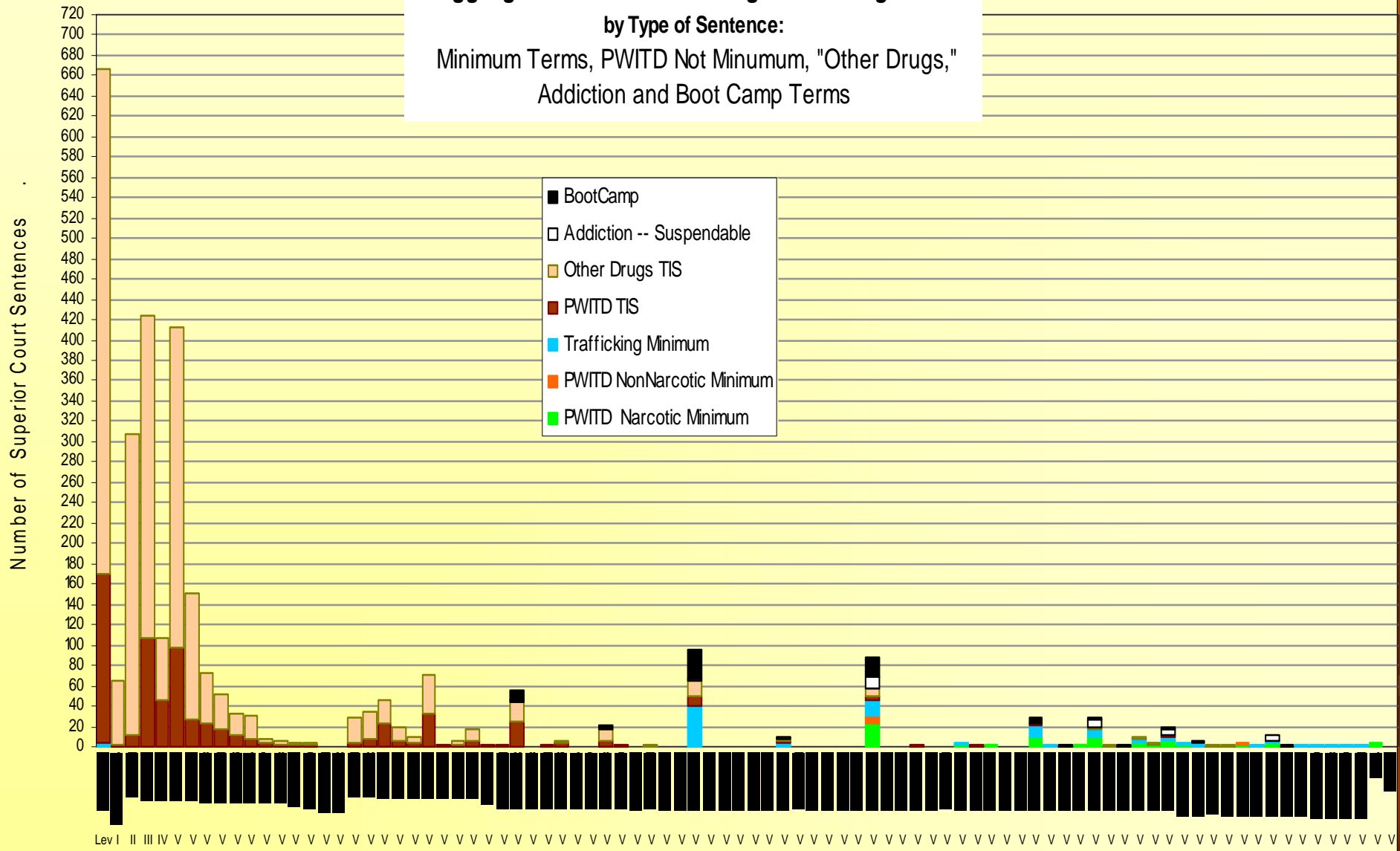
- Of the 3,020 drug cases in Superior Court, 1,427 (47%) were sentenced to some type of Level V incarceration.
  - The breakout of the 1,427 Level V cases with the percentage of the Level V caseload are as follows:
    - Time Served was the most likely Level V sentence with 771, or 54% of the Level V cases.
    - 259 (18%) cases were sentenced to Prison.
      - This is a key # for policy makers in Delaware, as a common misconception is that 'typical' drug users/dealers go to prison. The 259 cases going to prison account for only 8.5% of all drug convictions for 2007.
    - 281 (19.6%) cases were sentenced to Jail.
    - 68 (4.7%) cases were sentenced to Delaware's Adult Boot Camp Program (6 Month Program.)
    - 44 (3%) cases were sentenced to Level V Treatment (LV Term suspended upon successful completion of a Drug Treatment Program.
    - 4 (.13%) cases received Life in Prison (Habitual Offenders.)

# Sentencing Results Continued

- 902 (29.9%) cases were sentenced to some type of Probation (IV-I.)
- 667 (22%) cases of the original 3,020 cases were sentenced to some type of Diversion Program.
- 24 (.8%) cases had unresolved problems at the time of analysis.

# Drug Case Sentencing Distribution

**Chart 3: 2007 Superior Court Drug Case Sentencings**  
**Aggregate Terms for all Charges in a Drug Case**  
**by Type of Sentence:**  
 Minimum Terms, PWITD Not Minimum, "Other Drugs,"  
 Addiction and Boot Camp Terms



# Prior Drug Selling Convictions

- Of the 3,020 drug cases, 443 (13%) of the offenders had at least 1 prior drug selling conviction.
- Of the 229 cases sentenced to 3 years or greater, 124 (54%) had a prior drug selling conviction.

**Chart 6: 2007 Superior Court Drug Case Sentencings with and without Prior Drug Selling Convictions by Type of Sentence and Length**



# Treatment

Treatment of the offender's addiction is a high priority of SENTAC.

- Of the 3,020 Superior Court Drug Cases in 2007, 96% were recommended by the Court to receive some type of treatment or treatment assessment.
  - 21% (667) of the cases were sentenced to Drug Court Diversion and/or First Offenders Program (with the treatment programs that accompany.)
  - 534 (18%) cases were assigned to, or assessed by the Treatment Access Center (TASC.)
  - 112 cases had Prison and/or Jail sentences suspended upon the successful completion of Level V Treatment Programs (KEY, Greentree, Boot Camp.)

# Policy Question

The final misconception that this report attempted to address was the question of whether or not non-violent drug offenders were being sentenced to Prison.

- This report used Delaware's legal definition of a Violent Crime (11 4201.)
- That definition left 50 of the 259 Prison cases as possible non-violent cases.
  - More in-depth analysis showed that of these 50 cases, 10 were found to not have a violent crime at the time of sentencing.
- To answer the policy makers' question, 14 (5.4%) of the 259 cases sentenced to Prison had non-violent charges.

# Concluding Thoughts

- For 6 straight years in Delaware's Legislature, there has been a bill proposed to abolish Minimum Mandatory Drug Terms.
  - Currently Delaware's Department of Justice has established a committee assigned to re-write Delaware's Drug Laws (including the Min. Mand. Laws in addition to numerous others.)
  - In doing such, the Attorney General's office is trying to learn from the shortcomings of HB 210 (softening of drug laws) while still appeasing advocates of abolishing Min. Mand. drug sentences and locking up violent offenders.

**Check our website for more  
Criminal Justice Information at  
[SAC.OMB.DELAWARE.GOV](http://SAC.OMB.DELAWARE.GOV)**

**Thank You**