

**U.S. Sentencing Commission
Preliminary Crack Cocaine Retroactivity Data Report**



December 2008 Data

Introduction

As part of its ongoing mission, the United States Sentencing Commission provides Congress, the judiciary, the executive branch, and the general public with data extracted and analyzed from sentencing documents submitted by courts to the Commission.¹ Data is reported on an annual basis in the Commission's *Annual Report* and *Sourcebook of Federal Sentencing Statistics*.²

The Commission also reports preliminary data for an on-going fiscal year in order to provide real-time analysis of sentencing practices in the federal courts. Since 2005, the Commission has published a series of quarterly reports that are similar in format and methodology to tables and figures produced in the *Sourcebook of Federal Sentencing Statistics* or in the Commission's *Final Report on the Impact of the United States v. Booker on Federal Sentencing*.³ The quarterly reports contain cumulative data for the on-going fiscal year (i.e., data from the start of the fiscal year through the most current quarter).

This report is another in the Commission's efforts to provide analysis of federal sentencing practices. It provides data concerning recent court decisions considering motions to reduce the length of imprisonment for certain offenders convicted prior to November 1, 2007 of offenses involving crack cocaine.

On May 1, 2007, pursuant to 28 U.S.C. § 994(a) and (p), the Commission submitted to Congress amendments to the federal sentencing guidelines that became effective on November 1, 2007. One of those amendments, Amendment 706, modified the drug quantity thresholds in the Drug Quantity Table of §2D1.1 so as to assign, for crack cocaine offenses, base offense levels corresponding to guideline ranges that include the statutory mandatory minimum penalties. Crack cocaine offenses for quantities above and below the mandatory minimum threshold quantities similarly were adjusted downward by two levels. The amendment also included a mechanism to determine a combined base offense level in an offense involving crack cocaine and other controlled substances.

On December 11, 2007, the Commission voted to approve Amendment 713 which amended §1B1.10 of the guidelines to include Amendment 706, as amended by Amendment 711, in the list of amendments that apply retroactively. The Commission voted to make Amendment 713 effective on March 3, 2008. As a result, some incarcerated offenders are eligible to receive a reduction in their sentence under 18 U.S.C. § 3582(c)(2) pursuant to Amendment 706.

¹ In each felony or Class A misdemeanor case sentenced in federal court, sentencing courts are required to submit the following documents to the Commission: the judgment and commitment order, the statement of reasons, the plea agreement (if applicable), the indictment or other charging document, and the presentence report. See 28 U.S.C. § 994(w).

² See the Commission's website, www.ussc.gov, for electronic copies of the 1995-2007 *Annual Report* and *Sourcebook of Federal Sentencing Statistics*.

³ See www.ussc.gov/bf.htm for an electronic copy of the Commission's *Final Report on the Impact of United States v. Booker on Federal Sentencing*.

This report provides information on all cases reported to the Commission in which the court considered a motion to reduce a sentence under 18 U.S.C. § 3582(c)(2) for an offender convicted of an offense involving crack cocaine. The data in this report represents information based on court documentation received and coded at the U.S. Sentencing Commission by December 8, 2008. Users of this information are cautioned that the data are preliminary only and subject to change as the Commission receives, analyzes, and reports on additional cases.

In particular, the reader is cautioned with respect to drawing conclusions based on data concerning the denial of motions for sentence reduction pursuant to the crack cocaine amendment, as the judicial districts are employing various methods to prioritize the review of these motions. For example, in many districts, contested motions have not been decided by the court. Consequently, the data the Commission has received to date concerning cases in which the motion for a sentence reduction was denied may not be representative of the decisions that ultimately may be made in all districts or the nation as a whole.

Table 1

GEOGRAPHICAL DISTRIBUTION OF APPLICATION OF RETROACTIVE CRACK COCAINE AMENDMENT BY DISTRICT

| District | N | Granted | | Denied | | District | N | Granted | | Denied | |
|------------------------|---------------|---------------|-------------|--------------|-------------|-----------------------|-----|---------|-------|--------|------|
| | | N | % | N | % | | | N | % | N | % |
| TOTAL | 17,168 | 12,119 | 70.6 | 5,049 | 29.4 | | | | | | |
| Eastern Virginia | 1,113 | 679 | 61.0 | 434 | 39.0 | Eastern Kentucky | 128 | 69 | 53.9 | 59 | 46.1 |
| Middle Florida | 1,065 | 620 | 58.2 | 445 | 41.8 | Massachusetts | 125 | 97 | 77.6 | 28 | 22.4 |
| Western Virginia | 800 | 511 | 63.9 | 289 | 36.1 | Eastern Wisconsin | 122 | 90 | 73.8 | 32 | 26.2 |
| South Carolina | 741 | 601 | 81.1 | 140 | 18.9 | Eastern New York | 117 | 66 | 56.4 | 51 | 43.6 |
| Western Texas | 567 | 401 | 70.7 | 166 | 29.3 | Western Wisconsin | 113 | 89 | 78.8 | 24 | 21.2 |
| Eastern Missouri | 479 | 421 | 87.9 | 58 | 12.1 | Colorado | 110 | 59 | 53.6 | 51 | 46.4 |
| Northern Florida | 430 | 201 | 46.7 | 229 | 53.3 | Western Michigan | 106 | 46 | 43.4 | 60 | 56.6 |
| Southern Florida | 400 | 234 | 58.5 | 166 | 41.5 | Northern Iowa | 106 | 106 | 100.0 | 0 | 0.0 |
| Eastern Louisiana | 396 | 186 | 47.0 | 210 | 53.0 | Northern Georgia | 106 | 61 | 57.5 | 45 | 42.5 |
| Northern Texas | 396 | 231 | 58.3 | 165 | 41.7 | Maine | 104 | 60 | 57.7 | 44 | 42.3 |
| Eastern Texas | 395 | 335 | 84.8 | 60 | 15.2 | Northern Mississippi | 101 | 101 | 100.0 | 0 | 0.0 |
| Middle Georgia | 356 | 285 | 80.1 | 71 | 19.9 | Western Kentucky | 95 | 63 | 66.3 | 32 | 33.7 |
| Southern Georgia | 355 | 187 | 52.7 | 168 | 47.3 | Middle North Carolina | 93 | 79 | 84.9 | 14 | 15.1 |
| Southern Alabama | 342 | 234 | 68.4 | 108 | 31.6 | Western Pennsylvania | 89 | 81 | 91.0 | 8 | 9.0 |
| Southern Texas | 339 | 255 | 75.2 | 84 | 24.8 | New Jersey | 86 | 84 | 97.7 | 2 | 2.3 |
| Central Illinois | 307 | 139 | 45.3 | 168 | 54.7 | Eastern California | 86 | 85 | 98.8 | 1 | 1.2 |
| Western North Carolina | 280 | 188 | 67.1 | 92 | 32.9 | New Hampshire | 85 | 46 | 54.1 | 39 | 45.9 |
| Middle Pennsylvania | 276 | 180 | 65.2 | 96 | 34.8 | Western Arkansas | 78 | 51 | 65.4 | 27 | 34.6 |
| Southern New York | 275 | 118 | 42.9 | 157 | 57.1 | Middle Alabama | 77 | 71 | 92.2 | 6 | 7.8 |
| Northern Indiana | 254 | 205 | 80.7 | 49 | 19.3 | Southern Indiana | 71 | 39 | 54.9 | 32 | 45.1 |
| Southern West Virginia | 250 | 192 | 76.8 | 58 | 23.2 | Western Oklahoma | 62 | 62 | 100.0 | 0 | 0.0 |
| Western Louisiana | 250 | 154 | 61.6 | 96 | 38.4 | Northern Oklahoma | 56 | 28 | 50.0 | 28 | 50.0 |
| Nebraska | 247 | 207 | 83.8 | 40 | 16.2 | Rhode Island | 55 | 42 | 76.4 | 13 | 23.6 |
| Northern Ohio | 243 | 211 | 86.8 | 32 | 13.2 | Alaska | 49 | 29 | 59.2 | 20 | 40.8 |
| Northern West Virginia | 235 | 230 | 97.9 | 5 | 2.1 | Central California | 48 | 40 | 83.3 | 8 | 16.7 |
| Western Missouri | 227 | 137 | 60.4 | 90 | 39.6 | Nevada | 47 | 41 | 87.2 | 6 | 12.8 |
| Southern Illinois | 225 | 219 | 97.3 | 6 | 2.7 | Western Washington | 46 | 46 | 100.0 | 0 | 0.0 |
| Eastern Pennsylvania | 211 | 190 | 90.0 | 21 | 10.0 | Middle Louisiana | 38 | 32 | 84.2 | 6 | 15.8 |
| Maryland | 208 | 153 | 73.6 | 55 | 26.4 | New Mexico | 34 | 34 | 100.0 | 0 | 0.0 |
| Connecticut | 203 | 139 | 68.5 | 64 | 31.5 | Northern California | 30 | 30 | 100.0 | 0 | 0.0 |
| Southern Mississippi | 197 | 179 | 90.9 | 18 | 9.1 | Hawaii | 28 | 25 | 89.3 | 3 | 10.7 |
| Southern Ohio | 193 | 174 | 90.2 | 19 | 9.8 | Middle Tennessee | 25 | 25 | 100.0 | 0 | 0.0 |
| Northern Illinois | 189 | 176 | 93.1 | 13 | 6.9 | Vermont | 23 | 23 | 100.0 | 0 | 0.0 |
| Kansas | 186 | 184 | 98.9 | 2 | 1.1 | Oregon | 19 | 18 | 94.7 | 1 | 5.3 |
| Northern Alabama | 183 | 97 | 53.0 | 86 | 47.0 | Utah | 16 | 15 | 93.8 | 1 | 6.3 |
| Eastern North Carolina | 179 | 141 | 78.8 | 38 | 21.2 | Eastern Oklahoma | 15 | 12 | 80.0 | 3 | 20.0 |
| District of Columbia | 172 | 163 | 94.8 | 9 | 5.2 | Delaware | 13 | 13 | 100.0 | 0 | 0.0 |
| Minnesota | 172 | 147 | 85.5 | 25 | 14.5 | Eastern Washington | 12 | 5 | 41.7 | 7 | 58.3 |
| Western New York | 165 | 106 | 64.2 | 59 | 35.8 | Southern California | 10 | 10 | 100.0 | 0 | 0.0 |
| Western Tennessee | 165 | 121 | 73.3 | 44 | 26.7 | Montana | 8 | 4 | 50.0 | 4 | 50.0 |
| Eastern Tennessee | 156 | 122 | 78.2 | 34 | 21.8 | Virgin Islands | 4 | 4 | 100.0 | 0 | 0.0 |
| Eastern Arkansas | 149 | 102 | 68.5 | 47 | 31.5 | Idaho | 3 | 2 | 66.7 | 1 | 33.3 |
| Puerto Rico | 146 | 60 | 41.1 | 86 | 58.9 | Arizona | 2 | 2 | 100.0 | 0 | 0.0 |
| Southern Iowa | 144 | 80 | 55.6 | 64 | 44.4 | South Dakota | 1 | 1 | 100.0 | 0 | 0.0 |
| Eastern Michigan | 135 | 130 | 96.3 | 5 | 3.7 | Wyoming | 1 | 1 | 100.0 | 0 | 0.0 |
| Northern New York | 129 | 107 | 82.9 | 22 | 17.1 | | | | | | |

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2009 Datafiles, USSCFY08-USSCFY09.

Table 2

**GEOGRAPHICAL DISTRIBUTION OF APPLICATION OF
RETROACTIVE CRACK COCAINE AMENDMENT
BY JUDICIAL CIRCUIT**

| Circuit | N | Granted | Denied |
|------------------|---------------|----------------|---------------|
| TOTAL | 17,168 | 12,119 | 5,049 |
| FOURTH CIRCUIT | 3,899 | 2,774 | 1,125 |
| ELEVENTH CIRCUIT | 3,314 | 1,990 | 1,324 |
| FIFTH CIRCUIT | 2,679 | 1,874 | 805 |
| EIGHTH CIRCUIT | 1,603 | 1,252 | 351 |
| SEVENTH CIRCUIT | 1,281 | 957 | 324 |
| SIXTH CIRCUIT | 1,246 | 961 | 285 |
| SECOND CIRCUIT | 912 | 559 | 353 |
| THIRD CIRCUIT | 679 | 552 | 127 |
| FIRST CIRCUIT | 515 | 305 | 210 |
| TENTH CIRCUIT | 480 | 395 | 85 |
| NINTH CIRCUIT | 388 | 337 | 51 |
| D.C. CIRCUIT | 172 | 163 | 9 |

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2009 Datafiles, USSCFY08-USSCFY09.

Table 3**APPLICATION OF RETROACTIVE CRACK COCAINE AMENDMENT BY
YEAR OF ORIGINAL SENTENCE¹**

| Fiscal Year | Total | Granted | | Denied | |
|------------------------|---------------|----------------|-------------|---------------|-------------|
| | N | N | % | N | % |
| Total | 16,789 | 11,875 | 70.7 | 4,914 | 29.3 |
| 2008 | 272 | 89 | 32.7 | 183 | 67.3 |
| 2007 | 2,267 | 1,640 | 72.3 | 627 | 27.7 |
| 2006 | 2,303 | 1,736 | 75.4 | 567 | 24.6 |
| 2005 | 2,048 | 1,465 | 71.5 | 583 | 28.5 |
| 2004 | 1,761 | 1,291 | 73.3 | 470 | 26.7 |
| 2003 | 1,628 | 1,165 | 71.6 | 463 | 28.4 |
| 2002 | 1,249 | 903 | 72.3 | 346 | 27.7 |
| 2001 | 1,023 | 732 | 71.6 | 291 | 28.4 |
| 2000 | 934 | 653 | 69.9 | 281 | 30.1 |
| 1999 | 730 | 525 | 71.9 | 205 | 28.1 |
| 1998 | 574 | 382 | 66.6 | 192 | 33.4 |
| 1997 | 445 | 297 | 66.7 | 148 | 33.3 |
| 1996 | 407 | 280 | 68.8 | 127 | 31.2 |
| 1995 | 294 | 192 | 65.3 | 102 | 34.7 |
| 1994 | 274 | 155 | 56.6 | 119 | 43.4 |
| 1993 | 215 | 133 | 61.9 | 82 | 38.1 |
| 1992 | 155 | 101 | 65.2 | 54 | 34.8 |
| 1991 | 85 | 54 | 63.5 | 31 | 36.5 |
| 1990 | 81 | 49 | 60.5 | 32 | 39.5 |
| 1989 | 44 | 33 | 75.0 | 11 | 25.0 |

¹Of the 17,168 cases, 379 were excluded from this analysis because the case cannot be matched with an original case in the Commission's records.

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2009 Datafiles, USSCFY08-USSCFY09.

Table 4**ORIGIN OF GRANTED MOTION FOR SENTENCE REDUCTION DUE TO
RETROACTIVE APPLICATION OF CRACK COCAINE AMENDMENT¹**

| CIRCUIT | N | Defendant | | Director BOP² | | Court | |
|------------------|---------------|------------------|-------------|---------------------------------|------------|--------------|-------------|
| | | N | % | N | % | N | % |
| TOTAL | 10,986 | 8,917 | 81.2 | 0 | 0.0 | 2,069 | 18.8 |
| D.C. CIRCUIT | 142 | 139 | 97.9 | 0 | 0.0 | 3 | 2.1 |
| FIRST CIRCUIT | 299 | 248 | 82.9 | 0 | 0.0 | 51 | 17.1 |
| SECOND CIRCUIT | 528 | 342 | 64.8 | 0 | 0.0 | 186 | 35.2 |
| THIRD CIRCUIT | 465 | 459 | 98.7 | 0 | 0.0 | 6 | 1.3 |
| FOURTH CIRCUIT | 2,533 | 2,025 | 79.9 | 0 | 0.0 | 508 | 20.1 |
| FIFTH CIRCUIT | 1,600 | 1,153 | 72.1 | 0 | 0.0 | 447 | 27.9 |
| SIXTH CIRCUIT | 874 | 754 | 86.3 | 0 | 0.0 | 120 | 13.7 |
| SEVENTH CIRCUIT | 932 | 904 | 97.0 | 0 | 0.0 | 28 | 3.0 |
| EIGHTH CIRCUIT | 1,200 | 1,112 | 92.7 | 0 | 0.0 | 88 | 7.3 |
| NINTH CIRCUIT | 266 | 240 | 90.2 | 0 | 0.0 | 26 | 9.8 |
| TENTH CIRCUIT | 387 | 371 | 95.9 | 0 | 0.0 | 16 | 4.1 |
| ELEVENTH CIRCUIT | 1,760 | 1,170 | 66.5 | 0 | 0.0 | 590 | 33.5 |

¹Of the 12,119 cases in which the court granted a motion for a sentence reduction due to retroactive application of the crack cocaine amendment, 1,180 were excluded from this analysis because the information received by the Commission prevented a determination of motion origin. Additionally, courts may cite multiple origins for a motion; consequently, the total number of origins cited generally exceeds the total number of cases. In this table, 10,986 origins were cited for the 10,939 cases.

²In six cases, documents provided to the Commission indicated that the Bureau of Prisons Director made a motion. Those cases appear to be clerical errors.

Table 5

**DEMOGRAPHIC CHARACTERISTICS OF OFFENDERS CONSIDERED
FOR SENTENCE REDUCTION DUE TO APPLICATION OF
RETROACTIVE CRACK COCAINE AMENDMENT**

| Race/Ethnicity | Total | Granted | | Denied¹ | |
|-----------------------|---------------|----------------|----------|---------------------------|----------|
| | | N | % | N | % |
| White | 748 | 690 | 5.8 | 58 | 4.8 |
| Black | 11,255 | 10,215 | 86.1 | 1,040 | 86.8 |
| Hispanic | 946 | 853 | 7.2 | 93 | 7.8 |
| Other | 112 | 105 | 0.9 | 7 | 0.6 |
| Total | 13,061 | 11,863 | | 1,198 | |
| Citizenship | | | | | |
| U.S. Citizen | 12,228 | 11,091 | 94.6 | 1,137 | 94.9 |
| Non-Citizen | 689 | 628 | 5.4 | 61 | 5.1 |
| Total | 12,917 | 11,719 | | 1,198 | |
| Gender | | | | | |
| Male | 12,307 | 11,178 | 93.6 | 1,129 | 94.0 |
| Female | 840 | 768 | 6.4 | 72 | 6.0 |
| Total | 13,147 | 11,946 | | 1,201 | |
| Average Age | | | | | |
| | 30 | 30 | | 30 | |

¹The 1,201 offenders represented in this column are those whom the Commission previously identified as eligible to seek a sentence reduction but whose petition for a reduction was denied by the court. Of the remaining 3,848 cases in which the court denied the request for a sentence reduction, 2,590 were excluded from this analysis because the offender was not previously identified as eligible to seek a sentence reduction for one or more reasons (see 'Analysis of the Impact of the Crack Cocaine Amendment If Made Retroactive' (October 3, 2007) available at www.usc.gov). Of the remaining 1,258 cases, 216 were excluded from this analysis because the offender had been identified as released or projected to be released prior to November 1, 2007 and so was excluded from the Commission's prior analysis of eligible offenders, 334 were excluded from this analysis because the offender was not sentenced for a drug offense, 573 were excluded from this analysis because crack cocaine was not involved in the offense, and 135 were excluded from this analysis because the reason for the court's decision cannot yet be determined.

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2009 Datafiles, USSCFY08-USSCFY09.

Table 6**SELECTED SENTENCING FACTORS FOR OFFENDERS WHO WERE CONSIDERED FOR SENTENCE REDUCTION DUE TO APPLICATION OF RETROACTIVE CRACK COCAINE AMENDMENT**

| | All Cases | Granted | Denied ¹ |
|---|-----------|---------|---------------------|
| | % | % | % |
| Weapon | | | |
| Weapon Specific Offense Characteristic | 23.4 | 23.1 | 26.9 |
| Firearms Mandatory Minimum Applied | 8.9 | 8.5 | 12.8 |
| Safety Valve | 10.5 | 11.0 | 5.9 |
| Guideline Role Adjustments | | | |
| Aggravating Role (USSG §3B1.1) | 9.0 | 8.1 | 17.5 |
| Mitigating Role (USSG §3B1.2) | 3.3 | 3.1 | 5.3 |
| Obstruction Adjustment (USSG §3C1.1) | 5.4 | 5.3 | 6.5 |
| Sentence Relative to the Guideline Range | | | |
| Within Range | 69.6 | 70.9 | 57.0 |
| Above Range | 0.4 | 0.3 | 1.2 |
| Below Range | 30.0 | 28.8 | 41.9 |
| Criminal History Category | | | |
| I | 23.8 | 24.4 | 17.4 |
| II | 13.4 | 13.4 | 13.5 |
| III | 23.1 | 23.3 | 21.4 |
| IV | 16.6 | 16.8 | 14.5 |
| V | 9.9 | 9.8 | 11.2 |
| VI | 13.2 | 12.3 | 21.9 |

¹The 1,201 offenders represented in this column are those whom the Commission previously identified as eligible to seek a sentence reduction but whose petition for a reduction was denied by the court. Of the remaining 3,848 cases in which the court denied the request for a sentence reduction, 2,590 were excluded from this analysis because the offender was not previously identified as eligible to seek a sentence reduction for one or more reasons (*see* 'Analysis of the Impact of the Crack Cocaine Amendment If Made Retroactive' (October 3, 2007) *available at* www.ussc.gov). Of the remaining 1,258 cases, 216 were excluded from this analysis because the offender had been identified as released or projected to be released prior to November 1, 2007 and so was excluded from the Commission's prior analysis of eligible offenders, 334 were excluded from this analysis because the offender was not sentenced for a drug offense, 573 were excluded from this analysis because crack cocaine was not involved in the offense, and 135 were excluded from this analysis because the reason for the court's decision cannot yet be determined.

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2009 Datafiles, USSCFY08-USSCFY09.

Table 7

**POSITION OF WITHIN RANGE SENTENCES FOR OFFENDERS GRANTED A
SENTENCE REDUCTION DUE TO APPLICATION OF RETROACTIVE
CRACK COCAINE AMENDMENT¹**

| | <u>ORIGINAL SENTENCE</u> | | <u>CURRENT SENTENCE</u> | |
|----------------------------|--------------------------|--------------|-------------------------|--------------|
| | N | % | N | % |
| TOTAL | 4,947 | 100.0 | 4,947 | 100.0 |
| Guideline Minimum | 3,242 | 65.5 | 3,350 | 67.7 |
| Lower Half of Range | 830 | 16.8 | 625 | 12.6 |
| Midpoint of Range | 247 | 5.0 | 369 | 7.5 |
| Upper Half of Range | 309 | 6.2 | 289 | 5.8 |
| Guideline Maximum | 319 | 6.4 | 314 | 6.3 |

¹Of the 12,119 cases in which a motion for retroactive application of the crack cocaine amendment was granted, 6,439 received a sentence within the guideline range at both their original and current sentencing. Of these, 1,492 cases were excluded from this analysis due to one or more of the following reasons: the case is missing sentence length or guideline relevant statutory information from the new sentence (1,145), the case is missing sentence length or guideline relevant statutory information from the original sentence (281), the new sentence had a guideline minimum and maximum that were identical (140) or the original sentence had a guideline minimum and maximum that were identical (22).

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2009 Datafiles, USSCFY08-USSCFY09.

Table 8

**DEGREE OF DECREASE IN SENTENCE DUE TO RETROACTIVE APPLICATION OF
CRACK COCAINE AMENDMENT¹**

| CIRCUIT | | Average Current Sentence in Months | Average New Sentence in Months | Average Decrease in Months From Current Sentence | Average Percent Decrease From Current Sentence |
|-----------------------|---------------|---|---|---|---|
| District | N | | | | |
| TOTAL | 10,755 | 137 | 114 | 24 | 17.0 |
| D.C. CIRCUIT | 103 | 128 | 109 | 19 | 14.5 |
| District of Columbia | 103 | 128 | 109 | 19 | 14.5 |
| FIRST CIRCUIT | 257 | 108 | 89 | 19 | 17.4 |
| Maine | 60 | 126 | 104 | 22 | 16.8 |
| Massachusetts | 62 | 131 | 108 | 23 | 17.2 |
| New Hampshire | 44 | 89 | 72 | 17 | 19.5 |
| Puerto Rico | 56 | 79 | 65 | 13 | 17.3 |
| Rhode Island | 35 | 109 | 92 | 17 | 16.1 |
| SECOND CIRCUIT | 469 | 113 | 95 | 18 | 16.0 |
| Connecticut | 118 | 102 | 84 | 18 | 17.4 |
| New York | | | | | |
| Eastern | 57 | 107 | 89 | 18 | 17.1 |
| Northern | 76 | 134 | 113 | 21 | 15.5 |
| Southern | 106 | 130 | 110 | 20 | 15.0 |
| Western | 96 | 99 | 85 | 14 | 14.8 |
| Vermont | 16 | 97 | 78 | 18 | 18.6 |
| THIRD CIRCUIT | 458 | 123 | 102 | 21 | 16.5 |
| Delaware | 12 | 136 | 110 | 26 | 18.8 |
| New Jersey | 81 | 110 | 92 | 18 | 16.3 |
| Pennsylvania | | | | | |
| Eastern | 157 | 143 | 118 | 25 | 16.4 |
| Middle | 141 | 112 | 93 | 19 | 16.7 |
| Western | 67 | 113 | 95 | 18 | 16.5 |
| Virgin Islands | 0 | -- | -- | -- | -- |
| FOURTH CIRCUIT | 2,497 | 142 | 118 | 25 | 17.0 |
| Maryland | 118 | 131 | 110 | 22 | 16.4 |
| North Carolina | | | | | |
| Eastern | 138 | 135 | 112 | 23 | 16.4 |
| Middle | 78 | 148 | 121 | 26 | 17.4 |
| Western | 118 | 147 | 124 | 23 | 15.1 |
| South Carolina | 586 | 144 | 118 | 26 | 17.6 |
| Virginia | | | | | |
| Eastern | 618 | 157 | 129 | 28 | 17.3 |
| Western | 486 | 153 | 129 | 24 | 15.5 |
| West Virginia | | | | | |
| Northern | 173 | 80 | 66 | 15 | 18.5 |
| Southern | 182 | 125 | 102 | 23 | 18.7 |

Table 8 (continued)

**DEGREE OF DECREASE IN SENTENCE DUE TO RETROACTIVE APPLICATION OF
CRACK COCAINE AMENDMENT**

| CIRCUIT District | N | Average Current Sentence in Months | Average New Sentence in Months | Average Decrease in Months From Current Sentence | Average Percent Decrease From Current Sentence |
|-----------------------------|--------------|---|---|---|---|
| FIFTH CIRCUIT | 1,700 | 137 | 114 | 24 | 17.1 |
| Louisiana | | | | | |
| Eastern | 176 | 133 | 115 | 18 | 13.6 |
| Middle | 24 | 78 | 67 | 11 | 14.8 |
| Western | 136 | 145 | 120 | 25 | 17.1 |
| Mississippi | | | | | |
| Northern | 87 | 99 | 81 | 18 | 17.8 |
| Southern | 160 | 122 | 101 | 21 | 17.4 |
| Texas | | | | | |
| Eastern | 333 | 126 | 102 | 24 | 18.8 |
| Northern | 220 | 170 | 140 | 30 | 17.9 |
| Southern | 204 | 152 | 126 | 26 | 16.2 |
| Western | 360 | 138 | 115 | 23 | 17.3 |
| SIXTH CIRCUIT | 892 | 116 | 97 | 19 | 16.3 |
| Kentucky | | | | | |
| Eastern | 62 | 104 | 86 | 18 | 16.5 |
| Western | 62 | 118 | 100 | 18 | 15.0 |
| Michigan | | | | | |
| Eastern | 91 | 129 | 106 | 24 | 17.3 |
| Western | 45 | 86 | 76 | 10 | 13.2 |
| Ohio | | | | | |
| Northern | 208 | 101 | 84 | 17 | 17.7 |
| Southern | 170 | 124 | 104 | 20 | 16.0 |
| Tennessee | | | | | |
| Eastern | 119 | 119 | 102 | 17 | 14.4 |
| Middle | 22 | 128 | 110 | 18 | 14.6 |
| Western | 113 | 130 | 108 | 22 | 17.1 |
| SEVENTH CIRCUIT | 861 | 138 | 114 | 24 | 17.5 |
| Illinois | | | | | |
| Central | 124 | 160 | 132 | 28 | 17.1 |
| Northern | 150 | 125 | 105 | 20 | 16.3 |
| Southern | 215 | 150 | 123 | 27 | 17.7 |
| Indiana | | | | | |
| Northern | 197 | 128 | 106 | 22 | 17.1 |
| Southern | 27 | 176 | 146 | 30 | 16.1 |
| Wisconsin | | | | | |
| Eastern | 84 | 124 | 101 | 23 | 18.7 |
| Western | 64 | 122 | 96 | 25 | 20.7 |
| EIGHTH CIRCUIT | 1,106 | 127 | 105 | 22 | 16.7 |
| Arkansas | | | | | |
| Eastern | 80 | 141 | 116 | 25 | 17.9 |
| Western | 51 | 101 | 85 | 16 | 16.7 |
| Iowa | | | | | |
| Northern | 88 | 133 | 110 | 24 | 17.6 |
| Southern | 76 | 161 | 135 | 27 | 16.3 |
| Minnesota | 122 | 149 | 123 | 26 | 17.1 |
| Missouri | | | | | |
| Eastern | 392 | 113 | 94 | 18 | 16.2 |
| Western | 98 | 120 | 99 | 21 | 16.8 |
| Nebraska | 199 | 130 | 108 | 23 | 16.9 |
| North Dakota | 0 | -- | -- | -- | -- |
| South Dakota | 0 | -- | -- | -- | -- |

Table 8 (continued)

**DEGREE OF DECREASE IN SENTENCE DUE TO RETROACTIVE APPLICATION OF
CRACK COCAINE AMENDMENT**

| CIRCUIT | | Average Current Sentence in Months | Average New Sentence in Months | Average Decrease in Months From Current Sentence | Average Percent Decrease From Current Sentence |
|--------------------------|--------------|---|---|---|---|
| District | N | | | | |
| NINTH CIRCUIT | 297 | 136 | 114 | 22 | 15.8 |
| Alaska | 26 | 144 | 126 | 18 | 13.8 |
| Arizona | 2 | -- | -- | -- | -- |
| California | | | | | |
| Central | 34 | 158 | 129 | 29 | 18.3 |
| Eastern | 74 | 132 | 111 | 22 | 16.2 |
| Northern | 27 | 101 | 87 | 14 | 13.4 |
| Southern | 8 | 150 | 131 | 19 | 13.8 |
| Guam | 0 | -- | -- | -- | -- |
| Hawaii | 18 | 125 | 104 | 21 | 16.3 |
| Idaho | 2 | -- | -- | -- | -- |
| Montana | 4 | 102 | 90 | 12 | 13.1 |
| Nevada | 39 | 148 | 124 | 24 | 15.5 |
| Northern Mariana Islands | 0 | -- | -- | -- | -- |
| Oregon | 13 | 110 | 93 | 17 | 16.9 |
| Washington | | | | | |
| Eastern | 5 | 117 | 107 | 10 | 9.2 |
| Western | 45 | 141 | 113 | 28 | 17.2 |
| TENTH CIRCUIT | 349 | 142 | 117 | 25 | 17.2 |
| Colorado | 55 | 151 | 123 | 28 | 17.6 |
| Kansas | 165 | 124 | 103 | 21 | 16.6 |
| New Mexico | 33 | 130 | 107 | 23 | 17.4 |
| Oklahoma | | | | | |
| Eastern | 12 | 145 | 117 | 27 | 19.4 |
| Northern | 25 | 194 | 162 | 32 | 16.3 |
| Western | 45 | 183 | 148 | 35 | 18.9 |
| Utah | 13 | 118 | 98 | 20 | 16.2 |
| Wyoming | 1 | -- | -- | -- | -- |
| ELEVENTH CIRCUIT | 1,766 | 162 | 132 | 30 | 17.7 |
| Alabama | | | | | |
| Middle | 71 | 166 | 137 | 30 | 17.4 |
| Northern | 70 | 135 | 115 | 20 | 14.1 |
| Southern | 229 | 188 | 153 | 35 | 18.1 |
| Florida | | | | | |
| Middle | 584 | 159 | 128 | 31 | 18.7 |
| Northern | 169 | 227 | 184 | 43 | 18.2 |
| Southern | 222 | 132 | 110 | 22 | 16.7 |
| Georgia | | | | | |
| Middle | 218 | 127 | 102 | 25 | 19.3 |
| Northern | 54 | 174 | 142 | 32 | 17.9 |
| Southern | 149 | 158 | 135 | 23 | 14.1 |

¹Of the 17,168 cases, 379 were excluded from this analysis because the case cannot be matched with an original case in the Commission's records and 4,914 were excluded from this analysis because the court denied the motion for a sentence reduction. Of the remaining 11,875 cases, 1,120 were excluded from this analysis because the offender was sentenced to time served and the resulting term of imprisonment could not be determined from the records received by the Commission.

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2009 Datafiles, USSCFY08-USSCFY09.

Table 9**REASONS GIVEN BY SENTENCING COURTS FOR DENIAL OF MOTION¹**

| REASONS | N | % |
|--|--------------|-------------|
| Offense does not involve crack cocaine | 606 | 10.8 |
| Case does not involve crack cocaine | 509 | 9.1 |
| Sentence is determined by a non-drug guideline | 97 | 1.7 |
| Offender not eligible under §1B1.10 | 3,620 | 65.0 |
| Statutory mandatory minimum controls sentence | 1,341 | 24.1 |
| Career Offender or Armed Career Criminal provisions control sentence | 1,244 | 22.3 |
| Case involved more than 4.5 kg of crack cocaine | 502 | 9.0 |
| Base offense level does not change (due to multiple drugs) | 177 | 3.2 |
| Guideline range does not change | 174 | 3.1 |
| Original sentence has been served | 121 | 2.2 |
| Statutory maximum sentence is less than applicable guideline range | 55 | 1.0 |
| Base offense level is 12 or lower | 6 | 0.1 |
| Base offense level is 43 | 0 | 0.0 |
| Denied on the merits | 859 | 15.5 |
| Offender has already benefitted from departure or variance | 404 | 7.3 |
| 18 U.S.C § 3553(a) factors | 150 | 2.7 |
| Protection of the public | 131 | 2.4 |
| Post-sentencing or post-conviction conduct | 106 | 1.9 |
| Offender subject to guideline reduction at original sentencing | 68 | 1.2 |
| No reason provided/Other reason | 484 | 8.6 |
| Other | 260 | 4.6 |
| No reason provided | 224 | 4.0 |

¹Courts may cite multiple reasons for denying a motion; consequently, the total number of reasons cited generally exceeds the total number of cases. In this table, 5,569 reasons were cited for the 5,049 cases. Of the 224 cases in which the court did not give a reason for the denial, 134 were previously identified as ineligible by the Commission for sentence reduction (*see* 'Analysis of the Impact of the Crack Cocaine Amendment If Made Retroactive' (October 3, 2007) *available at* www.uscc.gov). Of those 134 cases, a statutory mandatory minimum controlled the sentence in 25 cases, in 17 cases the quantity of crack cocaine in the case exceeded 4.5 Kg, in 16 cases the sentence was determined by a non-drug guideline, in nine cases no change in the guideline range was found, in 27 cases crack cocaine was not involved, in 27 cases Career Offender or Armed Career Criminal provisions controlled the sentence, in six cases the offender was predicted to have been released, in three cases the Bureau of Prisons informed the Commission that the offender was no longer serving time for the instant offense, in one case the base offense level was 12 or lower, in two cases the base offense level was 43 and in one case there was no record on file with the Bureau of Prisons.

SOURCE: U.S. Sentencing Commission, Preliminary 2008-2009 Datafiles, USSCFY08-USSCFY09.