

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



**April 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.<sup>1</sup> Data is reported on an annual basis in the Commission's *Annual Report and Sourcebook of Federal Sentencing Statistics*.<sup>2</sup>

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*.<sup>3</sup> 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 §2D2.1 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 1, 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.

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<sup>1</sup> 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).

<sup>2</sup> See the Commission's website, [www.ussc.gov](http://www.ussc.gov), for electronic copies of the 1995-2006 *Annual Report and Sourcebook of Federal Sentencing Statistics*.

<sup>3</sup> See [www.ussc.gov/bf.htm](http://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. 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 AMENDMENT BY DISTRICT**

District	n	Granted		Denied		District	n	Granted		Denied	
		n	%	n	%			n	%	n	%
<b>TOTAL</b>	<b>3,647</b>	<b>3,075</b>	<b>84.3</b>	<b>572</b>	<b>15.7</b>						
Western Virginia	324	226	69.8	98	30.3	Southern Indiana	24	19	79.2	5	20.8
Middle Georgia	209	179	85.7	30	14.4	New Hampshire	21	16	76.2	5	23.8
South Carolina	149	138	92.6	11	7.4	Eastern Wisconsin	20	20	100.0	0	0.0
Northern West Virginia	139	139	100.0	0	0.0	Northern Mississippi	20	20	100.0	0	0.0
Middle Florida	127	121	95.3	6	4.7	Western Arkansas	19	13	68.4	6	31.6
Eastern Missouri	116	103	88.8	13	11.2	Eastern California	18	18	100.0	0	0.0
Southern Illinois	115	115	100.0	0	0.0	Northern Georgia	18	12	66.7	6	33.3
Northern Texas	108	79	73.2	29	26.9	Western Pennsylvania	18	15	83.3	3	16.7
Northern Florida	105	86	81.9	19	18.1	Western Washington	18	18	100.0	0	0.0
Southern Georgia	97	54	55.7	43	44.3	Eastern Michigan	17	17	100.0	0	0.0
Southern West Virginia	97	81	83.5	16	16.5	Eastern North Carolina	17	16	94.1	1	5.9
Kansas	94	93	98.9	1	1.1	Vermont	17	17	100.0	0	0.0
Eastern Louisiana	93	70	75.3	23	24.7	Western Missouri	17	7	41.2	10	58.8
Western Texas	92	92	100.0	0	0.0	Northern Oklahoma	16	4	25.0	12	75.0
Southern Texas	91	81	89.0	10	11.0	Eastern Kentucky	15	12	80.0	3	20.0
Western Louisiana	87	67	77.0	20	23.0	Northern Iowa	15	15	100.0	0	0.0
Northern Ohio	82	81	98.8	1	1.2	Eastern Tennessee	14	13	92.9	1	7.1
Northern Indiana	81	74	91.4	7	8.6	Rhode Island	13	11	84.6	2	15.4
Southern Ohio	76	76	100.0	0	0.0	Middle Alabama	12	11	91.7	1	8.3
Middle Pennsylvania	72	64	88.9	8	11.1	Western Oklahoma	12	12	100.0	0	0.0
Eastern Virginia	63	45	71.4	18	28.6	Delaware	7	7	100.0	0	0.0
District of Columbia	61	57	93.4	4	6.6	Oregon	7	7	100.0	0	0.0
Eastern Pennsylvania	60	58	96.7	2	3.3	Western North Carolina	7	6	85.7	1	14.3
Connecticut	57	57	100.0	0	0.0	Colorado	5	1	20.0	4	80.0
Nebraska	55	48	87.3	7	12.7	Hawaii	5	4	80.0	1	20.0
Central Illinois	52	41	78.9	11	21.2	Southern Mississippi	5	5	100.0	0	0.0
Maine	51	17	33.3	34	66.7	Western Michigan	4	3	75.0	1	25.0
Southern Florida	50	23	46.0	27	54.0	Middle Tennessee	3	3	100.0	0	0.0
Western New York	46	27	58.7	19	41.3	Nevada	3	3	100.0	0	0.0
Eastern Texas	44	41	93.2	3	6.8	Northern Alabama	3	3	100.0	0	0.0
Western Wisconsin	42	41	97.6	1	2.4	Northern California	3	3	100.0	0	0.0
Maryland	41	38	92.7	3	7.3	New Jersey	2	1	50.0	1	50.0
Southern New York	41	28	68.3	13	31.7	Puerto Rico	2	2	100.0	0	0.0
Northern New York	38	35	92.1	3	7.9	Utah	2	1	50.0	1	50.0
Northern Illinois	37	37	100.0	0	0.0	Eastern Oklahoma	1	1	100.0	0	0.0
Massachusetts	35	31	88.6	4	11.4	New Mexico	1	1	100.0	0	0.0
Eastern Arkansas	34	21	61.8	13	38.2	South Dakota	1	1	100.0	0	0.0
Minnesota	31	28	90.3	3	9.7	Southern Alabama	1	1	100.0	0	0.0
Eastern New York	27	23	85.2	4	14.8	Western Tennessee	1	1	100.0	0	0.0
Middle Louisiana	24	20	83.3	4	16.7						

SOURCE: U.S. Sentencing Commission, Preliminary Data from USSCFY08, received and coded as of April 14, 2008.

**Table 2**

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

<b>Circuit</b>	<b>n</b>	<b>Granted</b>	<b>Denied</b>
<b>TOTAL</b>	<b>3,647</b>	<b>3,075</b>	<b>572</b>
FOURTH CIRCUIT	837	689	148
ELEVENTH CIRCUIT	622	490	132
FIFTH CIRCUIT	564	475	89
SEVENTH CIRCUIT	371	347	24
EIGHTH CIRCUIT	288	236	52
SECOND CIRCUIT	226	187	39
SIXTH CIRCUIT	212	206	6
THIRD CIRCUIT	159	145	14
TENTH CIRCUIT	131	113	18
FIRST CIRCUIT	122	77	45
D.C. CIRCUIT	61	57	4
NINTH CIRCUIT	54	53	1

SOURCE: U.S. Sentencing Commission, Preliminary Data from USSCFY08, received and coded as of April 14, 2008.

**Table 3**  
**APPLICATION OF RETROACTIVE CRACK AMENDMENT BY YEAR OF ORIGINAL SENTENCE<sup>1</sup>**

<b>Fiscal Year</b>	<b>n</b>	<b>Granted</b>		<b>Denied</b>	
		<b>n</b>	<b>%</b>	<b>n</b>	<b>%</b>
<b>Total</b>	<b>3,617</b>	<b>3,047</b>	<b>84.2</b>	<b>570</b>	<b>15.8</b>
2008	18	9	50.0	9	50.0
2007	380	314	82.6	66	17.4
2006	437	380	87.0	57	13.0
2005	422	353	83.7	69	16.4
2004	365	313	85.8	52	14.3
2003	377	318	84.4	59	15.7
2002	301	249	82.7	52	17.3
2001	260	217	83.5	43	16.5
2000	218	187	85.8	31	14.2
1999	180	156	86.7	24	13.3
1998	164	138	84.2	26	15.9
1997	107	88	82.2	19	17.8
1996	106	95	89.6	11	10.4
1995	76	60	79.0	16	21.1
1994	71	60	84.5	11	15.5
1993	57	42	73.7	15	26.3
1992	41	35	85.4	6	14.6
1991	15	14	93.3	1	6.7
1990	16	13	81.3	3	18.8
1989	6	6	100.0	0	0.0

<sup>1</sup>Of the 3,647 cases, 30 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 Data from USSCFY08, received and coded as of April 14, 2008.

**Table 4****DEMOGRAPHIC CHARACTERISTICS OF OFFENDERS CONSIDERED FOR SENTENCE REDUCTION DUE TO APPLICATION OF RETROACTIVE CRACK AMENDMENT**

<b>Race/Ethnicity</b>	<b>Total</b>	<b>Granted</b>		<b>Denied<sup>1</sup></b>	
		<b>n</b>	<b>%</b>	<b>n</b>	<b>%</b>
White	281	242	8.0	15	8.8
Black	3,040	2,556	84.1	143	83.6
Hispanic	260	218	7.2	11	6.4
Other	29	25	0.8	2	1.2
<b>Total</b>	<b>3,610</b>	<b>3,041</b>		<b>171</b>	
<b>Citizenship</b>					
U.S. Citizen	3,368	2,839	94.7	160	94.1
Non-Citizen	196	160	5.3	10	5.9
<b>Total</b>	<b>3,564</b>	<b>2,999</b>		<b>170</b>	
<b>Gender</b>					
Male	3,280	2,773	90.7	150	87.7
Female	349	285	9.3	21	12.3
<b>Total</b>	<b>3,629</b>	<b>3,058</b>		<b>171</b>	
<b>Average Age</b>					
	<b>30</b>	<b>30</b>		<b>31</b>	

<sup>1</sup>The 171 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 401 cases in which the court denied the request for a sentence reduction, 278 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](http://www.ussc.gov)). Of the remaining 123 cases, 27 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, 34 were excluded from this analysis because the offender was not sentenced for a drug offense, 55 were excluded from this analysis because crack cocaine was not involved in the offense, and seven were excluded from this analysis because the reason for the court's decision cannot yet be determined.

SOURCE: U.S. Sentencing Commission, Preliminary Data from USSCFY08, received and coded as of April 14, 2008.

**Table 5****SELECTED SENTENCING FACTORS FOR OFFENDERS WHO WERE CONSIDERED FOR SENTENCE REDUCTION DUE TO APPLICATION OF RETROACTIVE CRACK AMENDMENT**

	<b>Total</b>	<b>Granted</b>	<b>Denied<sup>1</sup></b>
<b>Weapon</b>			
Weapon Specific Offense Characteristic	21.2%	21.6%	24.0%
Firearms Mandatory Minimum Applied	5.6%	4.9%	7.6%
<b>Safety Valve</b>	14.1%	15.5%	9.4%
<b>Guideline Role Adjustments</b>			
Aggravating Role (USSG §3B1.1)	7.4%	6.6%	17.0%
Mitigating Role (USSG §3B1.2)	3.7%	4.3%	5.9%
Obstruction Adjustment (USSG §3C1.1)	3.9%	4.1%	1.2%
<b>Sentence Relative to the Guideline Range</b>			
Within Range	69.4%	69.8%	55.3%
Above Range	0.3%	0.3%	0.0%
Below Range	30.3%	29.9%	44.7%
<b>Criminal History Category</b>			
I	27.9%	29.7%	14.6%
II	13.8%	14.4%	17.5%
III	22.5%	23.1%	24.6%
IV	14.3%	14.9%	14.6%
V	8.3%	8.3%	13.5%
VI	13.3%	9.6%	15.2%

<sup>1</sup>The 171 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 401 cases in which the court denied the request for a sentence reduction, 278 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.uscc.gov](http://www.uscc.gov)). Of the remaining 123 cases, 27 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, 34 were excluded from this analysis because the offender was not sentenced for a drug offense, 55 were excluded from this analysis because crack cocaine was not involved in the offense, and seven were excluded from this analysis because the reason for the court's decision cannot yet be determined.

SOURCE: U.S. Sentencing Commission, Preliminary Data from USSCFY08, received and coded as of April 14, 2008.

**Table 6**

**DEGREE OF DECREASE IN SENTENCE DUE TO RETROACTIVE APPLICATION OF CRACK AMENDMENT<sup>1</sup>**

<b>CIRCUIT</b>		<b>Average Current Sentence in Months</b>	<b>Average New Sentence in Months</b>	<b>Average Decrease in Months From Current Sentence</b>	<b>Average Percent Decrease From Current Sentence</b>
District	<b>n</b>				
<b>TOTAL</b>	<b>2,383</b>	<b>118</b>	<b>97</b>	<b>21</b>	<b>17.7</b>
<b>D.C. CIRCUIT</b>	<b>21</b>	<b>115</b>	<b>99</b>	<b>16</b>	<b>14.8</b>
District of Columbia	21	115	99	16	14.8
<b>FIRST CIRCUIT</b>	<b>54</b>	<b>89</b>	<b>73</b>	<b>16</b>	<b>18.2</b>
Maine	17	116	94	22	17.9
Massachusetts	13	86	72	14	16.6
New Hampshire	15	65	52	13	20.8
Puerto Rico	2	.	.	.	.
Rhode Island	7	97	83	14	16.0
<b>SECOND CIRCUIT</b>	<b>128</b>	<b>92</b>	<b>77</b>	<b>14</b>	<b>16.2</b>
Connecticut	44	67	55	11	17.4
New York					
Eastern	20	96	81	15	16.9
Northern	8	150	132	18	12.2
Southern	24	119	99	20	15.8
Western	22	83	72	12	14.5
Vermont	10	100	82	18	18.1
<b>THIRD CIRCUIT</b>	<b>86</b>	<b>108</b>	<b>88</b>	<b>20</b>	<b>17.2</b>
Delaware	7	137	111	26	18.9
New Jersey	1	.	.	.	.
Pennsylvania					
Eastern	38	128	104	24	16.0
Middle	33	80	66	15	18.4
Western	7	104	87	17	16.5
Virgin Islands	0	.	.	.	.
<b>FOURTH CIRCUIT</b>	<b>581</b>	<b>120</b>	<b>99</b>	<b>21</b>	<b>17.5</b>
Maryland	10	158	131	27	16.3
North Carolina					
Eastern	16	167	136	31	17.9
Middle	0	.	.	.	.
Western	0	.	.	.	.
South Carolina	136	118	95	23	18.8
Virginia					
Eastern	37	128	105	24	18.4
Western	220	143	119	23	15.9
West Virginia					
Northern	88	71	58	13	19.0
Southern	74	97	80	16	18.0

**Table 6 (continued)**

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

<b>CIRCUIT</b> District	<b>n</b>	<b>Average Current Sentence in Months</b>	<b>Average New Sentence in Months</b>	<b>Average Decrease in Months From Current Sentence</b>	<b>Average Percent Decrease From Current Sentence</b>
<b>FIFTH CIRCUIT</b>	<b>367</b>	<b>119</b>	<b>99</b>	<b>21</b>	<b>17.3</b>
Louisiana					
Eastern	66	98	84	14	14.3
Middle	13	72	63	9	13.2
Western	56	106	88	18	17.2
Mississippi					
Northern	6	125	98	27	22.6
Southern	3	110	83	27	24.4
Texas					
Eastern	39	124	100	24	19.6
Northern	74	150	123	26	18.3
Southern	44	144	118	26	16.8
Western	66	108	89	19	18.1
<b>SIXTH CIRCUIT</b>	<b>190</b>	<b>94</b>	<b>77</b>	<b>17</b>	<b>17.9</b>
Kentucky					
Eastern	10	95	77	18	17.9
Western	0	.	.	.	.
Michigan					
Eastern	7	133	115	18	12.7
Western	3	46	42	4	9.6
Ohio					
Northern	81	87	69	17	19.5
Southern	75	97	80	17	17.6
Tennessee					
Eastern	12	118	98	20	14.2
Middle	2	.	.	.	.
Western	0	.	.	.	.
<b>SEVENTH CIRCUIT</b>	<b>296</b>	<b>127</b>	<b>103</b>	<b>24</b>	<b>18.6</b>
Illinois					
Central	38	122	101	21	17.1
Northern	25	100	82	18	19.3
Southern	115	146	118	29	19.1
Indiana					
Northern	71	111	90	20	18.3
Southern	7	207	164	43	20.5
Wisconsin					
Eastern	19	101	83	18	18.9
Western	21	106	88	19	18.2
<b>EIGHTH CIRCUIT</b>	<b>167</b>	<b>104</b>	<b>86</b>	<b>18</b>	<b>17.1</b>
Arkansas					
Eastern	8	112	93	19	16.7
Western	13	108	92	16	15.2
Iowa					
Northern	2	.	.	.	.
Southern	0	.	.	.	.
Minnesota	16	141	113	28	18.7
Missouri					
Eastern	81	95	80	16	16.4
Western	1	.	.	.	.
Nebraska	46	104	86	19	17.9
North Dakota	0	.	.	.	.
South Dakota	0	.	.	.	.

**Table 6 (continued)**

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

<b>CIRCUIT</b>		<b>Average Current Sentence in Months</b>	<b>Average New Sentence in Months</b>	<b>Average Decrease in Months From Current Sentence</b>	<b>Average Percent Decrease From Current Sentence</b>
District	<b>n</b>				
<b>NINTH CIRCUIT</b>	<b>36</b>	<b>122</b>	<b>99</b>	<b>23</b>	<b>18.3</b>
Alaska	0	.	.	.	.
Arizona	0	.	.	.	.
California					
Central	0	.	.	.	.
Eastern	8	94	76	18	18.4
Northern	3	99	80	19	19.5
Southern	0	.	.	.	.
Guam	0	.	.	.	.
Hawaii	3	38	31	7	19.1
Idaho	0	.	.	.	.
Montana	0	.	.	.	.
Nevada	3	170	132	38	22.2
Northern Mariana Islands	0	.	.	.	.
Oregon	2	.	.	.	.
Washington					
Eastern	0	.	.	.	.
Western	17	150	124	26	16.7
<b>TENTH CIRCUIT</b>	<b>91</b>	<b>118</b>	<b>99</b>	<b>19</b>	<b>16.1</b>
Colorado	1	.	.	.	.
Kansas	79	114	95	18	16.1
New Mexico	1	.	.	.	.
Oklahoma					
Eastern	1	.	.	.	.
Northern	1	.	.	.	.
Western	7	164	138	26	16.2
Utah	1	.	.	.	.
Wyoming	0	.	.	.	.
<b>ELEVENTH CIRCUIT</b>	<b>366</b>	<b>143</b>	<b>115</b>	<b>28</b>	<b>19.0</b>
Alabama					
Middle	11	137	113	24	17.3
Northern	0	.	.	.	.
Southern	1	.	.	.	.
Florida					
Middle	112	139	111	28	19.4
Northern	60	198	159	39	19.2
Southern	22	120	97	24	19.3
Georgia					
Middle	129	116	92	23	19.6
Northern	9	146	122	24	17.3
Southern	22	188	158	30	15.0

<sup>1</sup>Of the 3,647 cases, 30 were excluded from this analysis because the case cannot be matched with an original case in the Commission's records and 570 were excluded from this analysis because the court denied the motion for a sentence reduction. Of the remaining 3,047 cases, 664 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 Data from USSCFY08, received and coded as of April 14, 2008.