

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



**May 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. The data in this report represents information based on court documentation received and coded at the U.S. Sentencing Commission by May 13, 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	%
<b>TOTAL</b>	<b>5,796</b>	<b>4,663</b>	<b>80.5</b>	<b>1,133</b>	<b>19.5</b>						
Western Virginia	439	307	69.9	132	30.1	Middle Alabama	37	33	89.2	4	10.8
South Carolina	288	264	91.7	24	8.3	Eastern New York	36	29	80.6	7	19.4
Middle Georgia	250	210	84.0	40	16.0	Eastern Wisconsin	36	33	91.7	3	8.3
Western Texas	228	185	81.1	43	18.9	Eastern Tennessee	33	32	97.0	1	3.0
Middle Florida	213	196	92.0	17	8.0	Eastern California	31	31	100.0	0	0.0
Eastern Virginia	200	139	69.5	61	30.5	Western Pennsylvania	30	24	80.0	6	20.0
Eastern Missouri	197	176	89.3	21	10.7	Northern Georgia	29	19	65.5	10	34.5
Northern Texas	185	117	63.2	68	36.8	Southern Indiana	29	23	79.3	6	20.7
Northern Florida	184	132	71.7	52	28.3	Western Arkansas	29	20	69.0	9	31.0
Northern West Virginia	167	167	100.0	0	0.0	Western Oklahoma	29	29	100.0	0	0.0
Eastern Louisiana	147	92	62.6	55	37.4	New Hampshire	28	22	78.6	6	21.4
Southern Illinois	138	136	98.6	2	1.5	Western Washington	26	26	100.0	0	0.0
Western Louisiana	128	88	68.8	40	31.3	Northern Alabama	25	19	76.0	6	24.0
Southern West Virginia	123	101	82.1	22	17.9	Northern Iowa	25	25	100.0	0	0.0
Kansas	112	110	98.2	2	1.8	Middle Louisiana	24	20	83.3	4	16.7
Northern Indiana	111	101	91.0	10	9.0	Southern Mississippi	24	23	95.8	1	4.2
Southern Texas	111	86	77.5	25	22.5	Northern Oklahoma	22	5	22.7	17	77.3
Middle Pennsylvania	110	87	79.1	23	20.9	Vermont	22	22	100.0	0	0.0
Southern Georgia	107	60	56.1	47	43.9	Western North Carolina	22	16	72.7	6	27.3
Southern Florida	104	58	55.8	46	44.2	Northern Mississippi	20	20	100.0	0	0.0
Northern Ohio	101	100	99.0	1	1.0	Western Michigan	20	16	80.0	4	20.0
Central Illinois	97	69	71.1	28	28.9	Eastern Kentucky	19	14	73.7	5	26.3
Northern New York	97	88	90.7	9	9.3	Rhode Island	19	16	84.2	3	15.8
Connecticut	95	74	77.9	21	22.1	Colorado	15	6	40.0	9	60.0
Nebraska	88	78	88.6	10	11.4	Western Tennessee	15	15	100.0	0	0.0
Southern Alabama	88	41	46.6	47	53.4	Hawaii	8	7	87.5	1	12.5
Southern Ohio	88	87	98.9	1	1.1	Delaware	7	7	100.0	0	0.0
District of Columbia	86	80	93.0	6	7.0	Middle North Carolina	7	7	100.0	0	0.0
Eastern Texas	78	71	91.0	7	9.0	New Jersey	7	6	85.7	1	14.3
Southern New York	69	36	52.2	33	47.8	New Mexico	7	7	100.0	0	0.0
Eastern Pennsylvania	67	65	97.0	2	3.0	Oregon	7	7	100.0	0	0.0
Maine	67	29	43.3	38	56.7	Puerto Rico	7	5	71.4	2	28.6
Maryland	62	59	95.2	3	4.8	Western Kentucky	7	6	85.7	1	14.3
Western New York	56	33	58.9	23	41.1	Nevada	6	5	83.3	1	16.7
Western Missouri	55	34	61.8	21	38.2	Alaska	4	1	25.0	3	75.0
Northern Illinois	53	52	98.1	1	1.9	Eastern Oklahoma	4	2	50.0	2	50.0
Western Wisconsin	52	51	98.1	1	1.9	Northern California	4	4	100.0	0	0.0
Massachusetts	51	45	88.2	6	11.8	Middle Tennessee	3	3	100.0	0	0.0
Eastern North Carolina	45	40	88.9	5	11.1	Eastern Washington	2	2	100.0	0	0.0
Eastern Michigan	44	44	100.0	0	0.0	Utah	2	1	50.0	1	50.0
Eastern Arkansas	43	27	62.8	16	37.2	Idaho	1	0	0.0	1	100.0
Minnesota	43	39	90.7	4	9.3	South Dakota	1	1	100.0	0	0.0

SOURCE: U.S. Sentencing Commission, Preliminary Data from USSCFY08.

**Table 2**  
**GEOGRAPHICAL DISTRIBUTION OF APPLICATION OF**  
**RETROACTIVE CRACK COCAINE AMENDMENT**  
**BY JUDICIAL CIRCUIT**

<b>Circuit</b>	<b>n</b>	<b>Granted</b>	<b>Denied</b>
<b>TOTAL</b>	<b>5,796</b>	<b>4,663</b>	<b>1,133</b>
FOURTH CIRCUIT	1,353	1,100	253
ELEVENTH CIRCUIT	1,037	768	269
FIFTH CIRCUIT	945	702	243
SEVENTH CIRCUIT	516	465	51
EIGHTH CIRCUIT	481	400	81
SECOND CIRCUIT	375	282	93
SIXTH CIRCUIT	330	317	13
THIRD CIRCUIT	221	189	32
TENTH CIRCUIT	191	160	31
FIRST CIRCUIT	172	117	55
NINTH CIRCUIT	89	83	6
D.C. CIRCUIT	86	80	6

SOURCE: U.S. Sentencing Commission, Preliminary Data from USSCFY08.

**Table 3**  
**APPLICATION OF RETROACTIVE CRACK COCAINE 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>5,754</b>	<b>4,626</b>	<b>80.4</b>	<b>1,128</b>	<b>19.6</b>
2008	38	15	39.5	23	60.5
2007	677	530	78.3	147	21.7
2006	716	589	82.3	127	17.7
2005	678	544	80.2	134	19.8
2004	585	489	83.6	96	16.4
2003	593	486	82.0	107	18.0
2002	470	378	80.4	92	19.6
2001	396	321	81.1	75	18.9
2000	328	269	82.0	59	18.0
1999	277	227	82.0	50	18.1
1998	240	197	82.1	43	17.9
1997	158	125	79.1	33	20.9
1996	165	134	81.2	31	18.8
1995	117	85	72.7	32	27.4
1994	105	75	71.4	30	28.6
1993	78	55	70.5	23	29.5
1992	62	49	79.0	13	21.0
1991	30	24	80.0	6	20.0
1990	25	19	76.0	6	24.0
1989	16	15	93.8	1	6.3

<sup>1</sup>Of the 5,796 cases, 42 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.

**Table 4****DEMOGRAPHIC CHARACTERISTICS OF OFFENDERS CONSIDERED FOR SENTENCE REDUCTION DUE TO APPLICATION OF RETROACTIVE CRACK COCAINE 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	350	328	7.1	22	6.7
Black	4,200	3,923	85.1	277	83.9
Hispanic	345	318	6.9	27	8.2
Other	46	42	0.9	4	1.2
<b>Total</b>	<b>4,941</b>	<b>4,611</b>		<b>330</b>	
<b>Citizenship</b>					
U.S. Citizen	4,603	4,294	94.5	309	93.9
Non-Citizen	271	251	5.5	20	6.1
<b>Total</b>	<b>4,874</b>	<b>4,545</b>		<b>329</b>	
<b>Gender</b>					
Male	4,546	4,246	91.5	300	90.9
Female	422	392	8.5	30	9.1
<b>Total</b>	<b>4,968</b>	<b>4,638</b>		<b>330</b>	
<b>Average Age</b>					
	<b>30</b>	<b>30</b>		<b>31</b>	

<sup>1</sup>The 330 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 803 cases in which the court denied the request for a sentence reduction, 583 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 220 cases, 39 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, 113 were excluded from this analysis because the offender was not sentenced for a drug offense, 63 were excluded from this analysis because crack cocaine was not involved in the offense, and five 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.

**Table 5**

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

	<b>Total</b>	<b>Granted</b>	<b>Denied<sup>1</sup></b>
<b>Weapon</b>			
Weapon Specific Offense Characteristic	22.5%	22.2%	26.1%
Firearms Mandatory Minimum Applied	6.0%	5.7%	11.2%
<b>Safety Valve</b>	13.5%	13.8%	8.5%
<b>Guideline Role Adjustments</b>			
Aggravating Role (USSG §3B1.1)	7.5%	6.9%	16.1%
Mitigating Role (USSG §3B1.2)	3.2%	3.9%	6.4%
Obstruction Adjustment (USSG §3C1.1)	4.5%	4.5%	4.2%
<b>Sentence Relative to the Guideline Range</b>			
Within Range	69.2%	69.9%	59.3%
Above Range	0.3%	0.3%	0.6%
Below Range	30.5%	29.8%	40.1%
<b>Criminal History Category</b>			
I	27.5%	28.1%	18.5%
II	13.7%	13.5%	16.1%
III	23.3%	23.5%	20.9%
IV	15.6%	15.7%	13.6%
V	9.4%	9.0%	14.2%
VI	10.6%	10.1%	16.7%

<sup>1</sup>The 330 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 803 cases in which the court denied the request for a sentence reduction, 583 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 220 cases, 39 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, 113 were excluded from this analysis because the offender was not sentenced for a drug offense, 63 were excluded from this analysis because crack cocaine was not involved in the offense, and five 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.

**Table 6****POSITION OF WITHIN RANGE SENTENCES FOR OFFENDERS GRANTED A SENTENCE REDUCTION DUE TO APPLICATION OF RETROACTIVE CRACK COCAINE AMENDMENT<sup>1</sup>**

	<b>ORIGINAL SENTENCE</b>		<b>CURRENT SENTENCE</b>	
	n	%	n	%
<b>TOTAL</b>	<b>1,925</b>	<b>100.0</b>	<b>1,925</b>	<b>100.0</b>
<b>Guideline Minimum</b>	1,267	65.8	1,302	67.6
<b>Lower Half of Range</b>	302	15.7	234	12.2
<b>Midpoint of Range</b>	106	5.5	152	7.9
<b>Upper Half of Range</b>	119	6.2	113	5.9
<b>Guideline Maximum</b>	131	6.8	124	6.4

<sup>1</sup>Of the 4,388 cases in which a motion for retroactive application of the crack cocaine amendment was granted, 2,550 received a sentence within the guideline range at both their original and current sentencing. Of these, 625 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 (539), the case is missing sentence length or guideline relevant statutory information from the original sentence (74), the new sentence had a guideline minimum and maximum that were identical (38) or the original sentence had a guideline minimum and maximum that were identical (11).

SOURCE: U.S. Sentencing Commission, Preliminary Data from USSCFY08.

**Table 7**

**DEGREE OF DECREASE IN SENTENCE DUE TO RETROACTIVE APPLICATION OF  
CRACK COCAINE 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>3,861</b>	<b>125</b>	<b>103</b>	<b>22</b>	<b>17.5</b>
<b>D.C. CIRCUIT</b>	<b>38</b>	<b>119</b>	<b>105</b>	<b>14</b>	<b>12.2</b>
District of Columbia	38	119	105	14	12.2
<b>FIRST CIRCUIT</b>	<b>87</b>	<b>96</b>	<b>79</b>	<b>17</b>	<b>18.2</b>
Maine	29	116	95	21	17.2
Massachusetts	22	105	88	18	16.9
New Hampshire	20	71	56	14	20.7
Puerto Rico	5	64	50	14	22.3
Rhode Island	11	89	75	14	16.8
<b>SECOND CIRCUIT</b>	<b>219</b>	<b>105</b>	<b>88</b>	<b>17</b>	<b>16.3</b>
Connecticut	59	75	63	12	17.0
New York					
Eastern	25	96	81	15	17.2
Northern	60	137	116	21	15.2
Southern	32	131	109	22	15.8
Western	28	80	69	12	15.5
Vermont	15	100	81	19	18.6
<b>THIRD CIRCUIT</b>	<b>130</b>	<b>109</b>	<b>90</b>	<b>19</b>	<b>17.1</b>
Delaware	7	137	111	26	18.9
New Jersey	6	98	81	17	17.5
Pennsylvania					
Eastern	44	127	104	24	16.6
Middle	59	97	81	16	16.9
Western	14	90	75	15	18.2
Virgin Islands	0	.	.	.	.
<b>FOURTH CIRCUIT</b>	<b>977</b>	<b>128</b>	<b>106</b>	<b>22</b>	<b>17.4</b>
Maryland	30	129	107	21	16.1
North Carolina					
Eastern	40	140	115	25	17.0
Middle	7	175	141	34	19.5
Western	1	.	.	.	.
South Carolina	261	124	101	23	18.1
Virginia					
Eastern	126	159	129	30	19.1
Western	301	145	122	23	15.5
West Virginia					
Northern	117	75	61	14	18.6
Southern	94	102	84	18	18.6

Table 7 (continued)

**DEGREE OF DECREASE IN SENTENCE DUE TO RETROACTIVE APPLICATION OF  
CRACK COCAINE 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>FIFTH CIRCUIT</b>	<b>582</b>	<b>127</b>	<b>105</b>	<b>22</b>	<b>17.2</b>
Louisiana					
Eastern	88	104	90	14	13.5
Middle	13	72	63	9	13.2
Western	72	111	92	19	17.3
Mississippi					
Northern	6	125	98	27	22.6
Southern	18	142	114	28	20.3
Texas					
Eastern	68	122	98	23	19.1
Northern	110	157	130	27	17.9
Southern	48	141	116	25	16.7
Western	159	129	106	22	17.8
<b>SIXTH CIRCUIT</b>	<b>285</b>	<b>100</b>	<b>83</b>	<b>17</b>	<b>17.5</b>
Kentucky					
Eastern	12	90	73	16	17.0
Western	6	95	77	18	18.8
Michigan					
Eastern	24	117	99	18	15.5
Western	14	82	73	10	13.5
Ohio					
Northern	100	89	72	17	19.0
Southern	86	105	87	18	17.4
Tennessee					
Eastern	31	120	101	19	15.6
Middle	2	.	.	.	.
Western	10	100	81	19	19.3
<b>SEVENTH CIRCUIT</b>	<b>407</b>	<b>126</b>	<b>103</b>	<b>23</b>	<b>18.3</b>
Illinois					
Central	61	131	108	23	17.2
Northern	39	107	88	19	18.0
Southern	136	143	116	27	18.4
Indiana					
Northern	98	112	92	20	18.2
Southern	11	199	160	39	19.4
Wisconsin					
Eastern	32	110	90	20	18.3
Western	30	105	84	20	20.0
<b>EIGHTH CIRCUIT</b>	<b>309</b>	<b>104</b>	<b>87</b>	<b>17</b>	<b>16.5</b>
Arkansas					
Eastern	13	107	90	17	16.0
Western	20	107	90	17	16.1
Iowa					
Northern	11	103	91	12	13.4
Southern	0	.	.	.	.
Minnesota	24	143	116	27	18.2
Missouri					
Eastern	153	99	83	16	16.5
Western	14	74	64	10	14.5
Nebraska	74	105	87	18	17.2
North Dakota	0	.	.	.	.
South Dakota	0	.	.	.	.

**Table 7 (continued)**

**DEGREE OF DECREASE IN SENTENCE DUE TO RETROACTIVE APPLICATION OF  
CRACK COCAINE 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>64</b>	<b>122</b>	<b>99</b>	<b>22</b>	<b>17.8</b>
Alaska	0	.	.	.	.
Arizona	0	.	.	.	.
California					
Central	0	.	.	.	.
Eastern	21	117	96	21	17.1
Northern	4	95	77	18	18.8
Southern	0	.	.	.	.
Guam	0	.	.	.	.
Hawaii	5	72	57	14	19.8
Idaho	0	.	.	.	.
Montana	0	.	.	.	.
Nevada	5	168	134	35	20.4
Northern Mariana Islands	0	.	.	.	.
Oregon	2	.	.	.	.
Washington					
Eastern	2	.	.	.	.
Western	25	137	113	24	17.2
<b>TENTH CIRCUIT</b>	<b>138</b>	<b>121</b>	<b>100</b>	<b>21</b>	<b>16.9</b>
Colorado	6	87	72	15	16.3
Kansas	97	111	92	19	16.6
New Mexico	7	110	91	19	17.6
Oklahoma					
Eastern	2	.	.	.	.
Northern	2	.	.	.	.
Western	23	164	134	30	18.6
Utah	1	.	.	.	.
Wyoming	0	.	.	.	.
<b>ELEVENTH CIRCUIT</b>	<b>625</b>	<b>155</b>	<b>125</b>	<b>30</b>	<b>18.9</b>
Alabama					
Middle	33	142	116	26	18.4
Northern	5	136	113	23	16.5
Southern	41	188	154	34	18.1
Florida					
Middle	185	149	119	30	19.5
Northern	106	227	183	44	18.4
Southern	55	125	103	22	17.4
Georgia					
Middle	156	115	91	24	20.2
Northern	16	157	128	29	18.8
Southern	28	178	151	27	14.3

<sup>1</sup>Of the 5,796 cases, 42 were excluded from this analysis because the case cannot be matched with an original case in the Commission's records and 1,128 were excluded from this analysis because the court denied the motion for a sentence reduction. Of the remaining 4,626 cases, 765 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.

**Table 8****REASONS GIVEN BY SENTENCING COURTS FOR DENIAL OF MOTION<sup>1</sup>**

<b>REASONS</b>	<b>Number</b>	<b>Percent</b>
<b>Offense does not involve crack cocaine</b>	<b>114</b>	<b>9.4</b>
Case does not involve crack cocaine	98	8.1
Sentence is determined by a non-drug guideline	16	1.3
<b>Offender not eligible under §1B1.10</b>	<b>798</b>	<b>65.8</b>
Statutory mandatory minimum controls sentence	280	23.1
Career Offender or Armed Career Criminal provisions control sentence	245	20.2
Case involved more than 4.5 kg of crack cocaine	104	8.6
Base offense level does not change (due to multiple drugs)	73	6.0
Guideline range does not change	39	3.2
Original sentence has been served	36	3.0
Statutory maximum sentence is less than applicable guideline range	19	1.6
Base offense level is 12 or lower	2	0.2
Base offense level is 43	0	0.0
<b>Denied on the merits</b>	<b>184</b>	<b>15.2</b>
Offender has already benefitted from departure or variance	91	7.5
18 U.S.C § 3553(a) factors	32	2.6
Protection of the public	32	2.6
Post-sentencing or post-conviction conduct	29	2.4
<b>No reason provided/Other reason</b>	<b>116</b>	<b>9.6</b>
No reason provided	55	4.5
Other	61	5.0

<sup>1</sup>Courts 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, 1,212 reasons were cited for the 1,133 cases. Of the 55 cases in which the court did not give a reason for the denial, 31 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.ussc.gov](http://www.ussc.gov)). Of those 31 cases, a statutory mandatory minimum controlled the sentence in nine cases, in six cases the quantity of crack cocaine in the case exceeded 4.5 Kg, in five cases the sentence was determined by a non-drug guideline, in four cases no change in the guideline range was found, in three cases crack cocaine was not involved, in two cases Career Offender or Armed Career Criminal provisions controlled the sentence, in one case the offender was predicted to have been released, and in one case the Bureau of Prisons informed the Commission that the offender was no longer serving time for the instant offense.