

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



February 2009 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 concerning motions decided through January 21, 2009 and for which court documentation was received, coded, and edited at the U.S. Sentencing Commission by January 26, 2009. 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	18,109	12,723	70.3	5,386	29.7						
Eastern Virginia	1,233	763	61.9	470	38.1	Eastern Kentucky	141	74	52.5	67	47.5
Middle Florida	1,105	638	57.7	467	42.3	Western Wisconsin	141	102	72.3	39	27.7
Western Virginia	804	513	63.8	291	36.2	Northern New York	132	110	83.3	22	16.7
South Carolina	779	627	80.5	152	19.5	Eastern Wisconsin	131	94	71.8	37	28.2
Western Texas	567	402	70.9	165	29.1	Northern Iowa	129	129	100.0	0	0.0
Eastern Missouri	488	430	88.1	58	11.9	Eastern New York	128	72	56.3	56	43.8
Northern Florida	461	213	46.2	248	53.8	Northern Mississippi	120	120	100.0	0	0.0
Eastern Louisiana	420	192	45.7	228	54.3	Colorado	115	62	53.9	53	46.1
Southern Florida	415	239	57.6	176	42.4	Western Michigan	114	53	46.5	61	53.5
Eastern Texas	414	351	84.8	63	15.2	Middle North Carolina	111	88	79.3	23	20.7
Northern Texas	403	235	58.3	168	41.7	Northern Georgia	110	63	57.3	47	42.7
Middle Georgia	373	294	78.8	79	21.2	Maine	106	60	56.6	46	43.4
Southern Georgia	368	188	51.1	180	48.9	Western Kentucky	97	63	64.9	34	35.1
Southern Texas	347	260	74.9	87	25.1	Western Pennsylvania	96	87	90.6	9	9.4
Southern Alabama	345	235	68.1	110	31.9	New Jersey	88	85	96.6	3	3.4
Western North Carolina	342	224	65.5	118	34.5	Eastern California	87	86	98.9	1	1.1
Central Illinois	318	147	46.2	171	53.8	New Hampshire	86	47	54.7	39	45.3
Middle Pennsylvania	283	183	64.7	100	35.3	Western Arkansas	81	51	63.0	30	37.0
Southern New York	278	121	43.5	157	56.5	Middle Alabama	79	73	92.4	6	7.6
Northern Ohio	268	236	88.1	32	11.9	Southern Indiana	78	41	52.6	37	47.4
Western Missouri	264	160	60.6	104	39.4	Northern Oklahoma	63	32	50.8	31	49.2
Southern West Virginia	261	202	77.4	59	22.6	Western Oklahoma	62	62	100.0	0	0.0
Northern Indiana	256	207	80.9	49	19.1	Rhode Island	59	46	78.0	13	22.0
Western Louisiana	255	156	61.2	99	38.8	Alaska	54	31	57.4	23	42.6
Nebraska	254	210	82.7	44	17.3	Nevada	54	47	87.0	7	13.0
Northern West Virginia	237	232	97.9	5	2.1	Central California	53	45	84.9	8	15.1
Maryland	230	170	73.9	60	26.1	Middle Louisiana	50	36	72.0	14	28.0
Southern Illinois	230	224	97.4	6	2.6	Western Washington	46	46	100.0	0	0.0
Eastern Pennsylvania	220	198	90.0	22	10.0	New Mexico	35	35	100.0	0	0.0
Connecticut	218	143	65.6	75	34.4	Northern California	30	30	100.0	0	0.0
Northern Illinois	217	199	91.7	18	8.3	Middle Tennessee	28	28	100.0	0	0.0
Northern Alabama	203	110	54.2	93	45.8	Hawaii	28	25	89.3	3	10.7
Southern Mississippi	198	179	90.4	19	9.6	Vermont	23	23	100.0	0	0.0
Southern Ohio	193	174	90.2	19	9.8	Oregon	20	19	95.0	1	5.0
Minnesota	191	160	83.8	31	16.2	Utah	16	15	93.8	1	6.3
Kansas	188	186	98.9	2	1.1	Eastern Oklahoma	15	12	80.0	3	20.0
District of Columbia	182	172	94.5	10	5.5	Delaware	13	13	100.0	0	0.0
Eastern North Carolina	180	142	78.9	38	21.1	Eastern Washington	12	5	41.7	7	58.3
Western Tennessee	173	127	73.4	46	26.6	Southern California	11	11	100.0	0	0.0
Western New York	171	110	64.3	61	35.7	Montana	8	4	50.0	4	50.0
Eastern Tennessee	161	126	78.3	35	21.7	Virgin Islands	4	4	100.0	0	0.0
Southern Iowa	157	93	59.2	64	40.8	Idaho	3	2	66.7	1	33.3
Puerto Rico	154	63	40.9	91	59.1	Arizona	2	2	100.0	0	0.0
Eastern Arkansas	152	105	69.1	47	30.9	South Dakota	1	1	100.0	0	0.0
Eastern Michigan	150	144	96.0	6	4.0	Wyoming	1	1	100.0	0	0.0
Massachusetts	142	105	73.9	37	26.1						

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	18,109	12,723	5,386
FOURTH CIRCUIT	4,177	2,961	1,216
ELEVENTH CIRCUIT	3,459	2,053	1,406
FIFTH CIRCUIT	2,774	1,931	843
EIGHTH CIRCUIT	1,717	1,339	378
SEVENTH CIRCUIT	1,371	1,014	357
SIXTH CIRCUIT	1,325	1,025	300
SECOND CIRCUIT	950	579	371
THIRD CIRCUIT	704	570	134
FIRST CIRCUIT	547	321	226
TENTH CIRCUIT	495	405	90
NINTH CIRCUIT	408	353	55
D.C. CIRCUIT	182	172	10

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	17,689	12,453	70.4	5,236	29.6
2008	304	98	32.2	206	67.8
2007	2,414	1,735	71.9	679	28.1
2006	2,421	1,815	75.0	606	25.0
2005	2,154	1,545	71.7	609	28.3
2004	1,837	1,337	72.8	500	27.2
2003	1,701	1,217	71.5	484	28.5
2002	1,316	947	72.0	369	28.0
2001	1,075	764	71.1	311	28.9
2000	989	686	69.4	303	30.6
1999	765	546	71.4	219	28.6
1998	611	404	66.1	207	33.9
1997	471	314	66.7	157	33.3
1996	418	288	68.9	130	31.1
1995	313	204	65.2	109	34.8
1994	290	164	56.6	126	43.4
1993	225	137	60.9	88	39.1
1992	164	109	66.5	55	33.5
1991	89	57	64.0	32	36.0
1990	86	52	60.5	34	39.5
1989	46	34	73.9	12	26.1

¹Of the 18,109 cases, 420 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	11,532	9,428	81.8	0	0.0	2,104	18.2
D.C. CIRCUIT	148	145	98.0	0	0.0	3	2.0
FIRST CIRCUIT	314	262	83.4	0	0.0	52	16.6
SECOND CIRCUIT	543	356	65.6	0	0.0	187	34.4
THIRD CIRCUIT	482	476	98.8	0	0.0	6	1.2
FOURTH CIRCUIT	2,698	2,184	80.9	0	0.0	514	19.1
FIFTH CIRCUIT	1,652	1,199	72.6	0	0.0	453	27.4
SIXTH CIRCUIT	938	816	87.0	0	0.0	122	13.0
SEVENTH CIRCUIT	988	958	97.0	0	0.0	30	3.0
EIGHTH CIRCUIT	1,280	1,183	92.4	0	0.0	97	7.6
NINTH CIRCUIT	277	250	90.3	0	0.0	27	9.7
TENTH CIRCUIT	397	381	96.0	0	0.0	16	4.0
ELEVENTH CIRCUIT	1,815	1,218	67.1	0	0.0	597	32.9

¹Of the 12,723 cases in which the court granted a motion for a sentence reduction due to retroactive application of the crack cocaine amendment, 1,239 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, 11,532 origins were cited for the 11,484 cases.

²In eight 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	798	738	5.9	60	4.7
Black	11,807	10,708	86.0	1,099	86.9
Hispanic	992	893	7.2	99	7.8
Other	115	108	0.9	7	0.6
Total	13,712	12,447		1,265	
Citizenship					
U.S. Citizen	12,845	11,642	94.7	1,203	95.1
Non-Citizen	717	655	5.3	62	4.9
Total	13,562	12,297		1,265	
Gender					
Male	12,936	11,740	93.7	1,196	94.3
Female	868	796	6.3	72	5.7
Total	13,804	12,536		1,268	
Average Age					
	30	30		30	

¹The 1,268 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 4,118 cases in which the court denied the request for a sentence reduction, 2,753 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). Of the remaining 1,365 cases, 242 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, 356 were excluded from this analysis because the offender was not sentenced for a drug offense, 617 were excluded from this analysis because crack cocaine was not involved in the offense, and 150 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	23.6	23.2	27.4
Firearms Mandatory Minimum Applied	9.1	8.7	12.7
Safety Valve	10.2	10.7	5.7
Guideline Role Adjustments			
Aggravating Role (USSG §3B1.1)	9.2	8.3	17.5
Mitigating Role (USSG §3B1.2)	3.3	3.1	5.1
Obstruction Adjustment (USSG §3C1.1)	5.7	5.6	6.8
Sentence Relative to the Guideline Range			
Within Range	69.8	71.0	57.7
Above Range	0.4	0.3	1.2
Below Range	29.8	28.7	41.1
Criminal History Category			
I	23.6	24.2	17.5
II	13.3	13.2	13.6
III	23.2	23.4	21.3
IV	16.7	16.9	14.4
V	10.0	9.9	11.1
VI	13.2	12.4	22.1

¹The 1,268 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 4,118 cases in which the court denied the request for a sentence reduction, 2,753 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 1,365 cases, 242 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, 356 were excluded from this analysis because the offender was not sentenced for a drug offense, 617 were excluded from this analysis because crack cocaine was not involved in the offense, and 150 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	5,167	100.0	5,167	100.0
Guideline Minimum	3,380	65.4	3,497	67.7
Lower Half of Range	867	16.8	656	12.7
Midpoint of Range	254	4.9	386	7.5
Upper Half of Range	329	6.4	299	5.8
Guideline Maximum	337	6.5	329	6.4

¹Of the 12,723 cases in which a motion for retroactive application of the crack cocaine amendment was granted, 6,724 received a sentence within the guideline range at both their original and current sentencing. Of these, 1,557 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 (1,180), the case is missing sentence length or guideline relevant statutory information from the original sentence (308), the new sentence had a guideline minimum and maximum that were identical (150) 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	11,305	139	115	24	17.0
D.C. CIRCUIT	109	127	109	19	14.6
District of Columbia	109	127	109	19	14.6
FIRST CIRCUIT	272	111	92	19	17.4
Maine	60	126	104	22	16.8
Massachusetts	70	136	112	24	17.3
New Hampshire	45	95	76	18	19.5
Puerto Rico	59	78	65	13	17.3
Rhode Island	38	114	96	18	16.0
SECOND CIRCUIT	487	115	96	18	16.0
Connecticut	122	104	87	18	17.1
New York					
Eastern	63	116	96	20	17.3
Northern	77	134	113	21	15.6
Southern	109	130	110	20	15.2
Western	100	99	85	14	14.8
Vermont	16	97	78	18	18.6
THIRD CIRCUIT	470	125	104	21	16.5
Delaware	12	136	110	26	18.8
New Jersey	82	111	93	18	16.3
Pennsylvania					
Eastern	161	144	120	25	16.3
Middle	142	114	95	19	16.6
Western	73	118	99	19	16.4
Virgin Islands	0	--	--	--	--
FOURTH CIRCUIT	2,663	143	118	25	17.0
Maryland	134	134	111	23	16.7
North Carolina					
Eastern	139	136	113	23	16.5
Middle	87	145	119	26	17.2
Western	147	148	125	23	15.1
South Carolina	607	146	119	27	17.7
Virginia					
Eastern	695	156	129	28	17.2
Western	488	153	129	24	15.5
West Virginia					
Northern	175	80	66	15	18.5
Southern	191	128	104	24	18.8

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	1,756	138	114	24	17.2
Louisiana					
Eastern	181	133	115	18	13.7
Middle	28	86	75	12	14.2
Western	138	148	122	26	17.1
Mississippi					
Northern	106	106	87	19	18.1
Southern	160	122	101	21	17.4
Texas					
Eastern	349	126	102	24	18.7
Northern	224	171	140	31	18.0
Southern	209	152	127	26	16.2
Western	361	138	115	23	17.3
SIXTH CIRCUIT	953	117	98	19	16.2
Kentucky					
Eastern	67	104	87	18	16.4
Western	62	118	100	18	15.0
Michigan					
Eastern	103	131	108	24	17.0
Western	52	87	76	11	13.7
Ohio					
Northern	232	101	84	17	17.6
Southern	170	126	106	20	16.0
Tennessee					
Eastern	123	119	102	17	14.3
Middle	25	134	113	21	15.8
Western	119	135	112	23	17.2
SEVENTH CIRCUIT	913	142	117	25	17.5
Illinois					
Central	132	162	134	28	16.9
Northern	172	136	114	22	16.3
Southern	219	152	125	27	17.7
Indiana					
Northern	198	128	106	22	17.1
Southern	29	183	154	29	15.3
Wisconsin					
Eastern	87	128	104	23	18.7
Western	76	136	107	30	21.2
EIGHTH CIRCUIT	1,188	132	109	22	16.7
Arkansas					
Eastern	83	141	116	25	17.9
Western	51	101	85	16	16.7
Iowa					
Northern	110	157	130	28	17.5
Southern	88	162	135	27	16.1
Minnesota	134	155	128	27	17.1
Missouri					
Eastern	401	113	95	18	16.2
Western	120	127	106	22	16.5
Nebraska	201	131	108	23	17.0
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	310	138	115	23	15.9
Alaska	28	151	132	20	13.9
Arizona	2	--	--	--	--
California					
Central	37	156	127	29	18.4
Eastern	75	133	111	22	16.1
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	45	155	129	26	16.1
Northern Mariana Islands	0	--	--	--	--
Oregon	14	112	95	17	16.7
Washington					
Eastern	5	117	107	10	9.2
Western	45	141	113	28	17.2
TENTH CIRCUIT	359	144	118	25	17.2
Colorado	58	155	126	29	17.7
Kansas	167	125	104	21	16.7
New Mexico	34	131	107	24	17.6
Oklahoma					
Eastern	12	145	117	27	19.4
Northern	29	191	159	32	16.1
Western	45	183	148	35	18.9
Utah	13	118	98	20	16.2
Wyoming	1	--	--	--	--
ELEVENTH CIRCUIT	1,825	163	133	30	17.7
Alabama					
Middle	73	168	138	30	17.4
Northern	82	142	120	21	14.3
Southern	230	187	153	35	18.1
Florida					
Middle	601	160	129	31	18.6
Northern	180	228	185	43	18.1
Southern	227	133	110	22	16.6
Georgia					
Middle	226	127	102	25	19.1
Northern	56	181	148	33	17.7
Southern	150	157	135	23	14.0

¹Of the 18,109 cases, 420 were excluded from this analysis because the case cannot be matched with an original case in the Commission's records and 5,236 were excluded from this analysis because the court denied the motion for a sentence reduction. Of the remaining 12,453 cases, 1,148 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	656	11.0
Case does not involve crack cocaine	554	9.3
Sentence is determined by a non-drug guideline	102	1.7
Offender not eligible under §1B1.10	3,850	64.8
Statutory mandatory minimum controls sentence	1,419	23.9
Career Offender or Armed Career Criminal provisions control sentence	1,331	22.4
Case involved more than 4.5 kg of crack cocaine	534	9.0
Guideline range does not change	188	3.2
Base offense level does not change (due to multiple drugs)	186	3.1
Original sentence has been served	126	2.1
Statutory maximum sentence is less than applicable guideline range	60	1.0
Base offense level is 12 or lower	6	0.1
Base offense level is 43	0	0.0
Denied on the merits	908	15.3
Offender has already benefitted from departure or variance	418	7.0
18 U.S.C § 3553(a) factors	156	2.6
Protection of the public	141	2.4
Post-sentencing or post-conviction conduct	112	1.9
Offender subject to guideline reduction at original sentencing	81	1.4
No reason provided/Other reason	534	8.9
Other	289	4.8
No reason provided	245	4.1

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, 5,948 reasons were cited for the 5,386 cases. Of the 245 cases in which the court did not give a reason for the denial, 151 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 151 cases, a statutory mandatory minimum controlled the sentence in 30 cases, in 18 cases the quantity of crack cocaine in the case exceeded 4.5 Kg, in 17 cases the sentence was determined by a non-drug guideline, in nine cases no change in the guideline range was found, in 29 cases crack cocaine was not involved, in 34 cases Career Offender or Armed Career Criminal provisions controlled the sentence, in six cases the offender was predicted to have been released, in four 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.